

***United States Court of Appeals
for the Second Circuit***



APPENDIX

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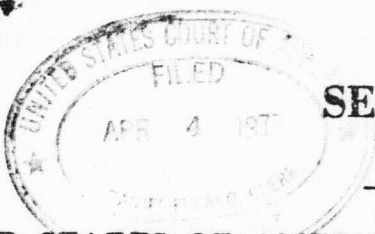
77-6022

Vol.
I

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT



UNITED STATES OF AMERICA,

Plaintiff-Appellee,

by Dorothy S. Greenberg, for herself as well as for the
United States of America,

Plaintiff-Relator-Appellant,

-against-

THE BURMAH OIL COMPANY LIMITED, BURMAH OIL INCORPORATED, BURMAH OIL TANKERS LIMITED, BETHEL MARINE, INC., SOUTHHOLD MARINE, INC., VERMONT MARINE, INC., BURMAST EAST SHIPPING CORP., BURMAH GAS TRANSPORTATION LIMITED, ELIAS J. KULUKUNDIS, SUMMITT MARINE OPERATIONS, INC., SUMMIT I INC., SUMMITT II, INC., SUMMITT III, INC., CHEROKEE I SHIPPING CORPORATION, CHEROKEE II SHIPPING CORPORATION, CHEROKEE III SHIPPING CORPORATION, CHEROKEE IV SHIPPING CORPORATION, CHEROKEE V SHIPPING CORPORATION, ENERGY TRANSPORTATION CORPORATION, C. Y. CHEN, JOSEPH J. CUNEO, JEROME SHELBY, CRYOGENIC ENERGY TRANSPORT, INC., LNG TRANSPORT INC., LIQUEGAS TRANSPORT INC., JAMES DURBIN, JOHN C. BULLITT, FIRST NATIONAL CITY BANK, CITICORP LEASING, INC., GENERAL AMERICAN TRANSPORTATION CORP., GENERAL DYNAMICS CORPORATION, CITIMARLEASE (BURMAH I), INC., CITIMARLEASE (BURMAH LNG CARRIER), INC., CITIMARLEASE (BURMAH LIQUEGAS), INC. and CITICORP.,

Defendants-Appellees.

On Appeal from an Order and Final Judgment of the
United States District Court for the Southern District of New York

JOINT APPENDIX

(Volume I of II - Pages A-1 - A-279)

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DOCKET ENTRIES

NO. OF YEARS								25	OTHER	NUMBER	DEM.	YR.	NUMBER
208-1	76	4351	09	30	76	1	890	1		0855		76	4351

PLAINTIFFS

DEFENDANTS Knapp, J.

UNITED STATES OF AMERICA, by
Dorothy S. Greenberg, for
herself as well as for the
United States of America

THE BURMAH OIL COMPANY LTD.,
et al.

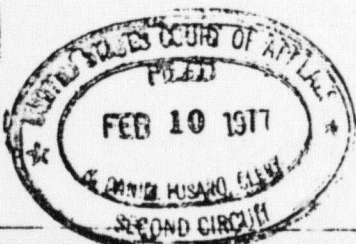
See additional page for
complete parties
listing

CAUSE

Viol. of False Claims Act, U.S. Shipping Act of 1916 and Merchant Marine Act of 1936. rg

ATTORNEYS

Lipper, Lowey, Dannenberg &
Burton L. Knapp
747 Third Ave.
New York, N.Y. 10017
tele: (212) 759-1504



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☐ CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID RECEIPT NUMBER:		C.D. NUMBER		STATISTICAL CARDS	
	DATE SEP 30 1976	-7665			CARD JS-5	DATE MAILED

-4351 Knapp, J. UNITED STATES OF AMERICA, etc. -vs- THE BURMAH OIL CO. LTD., et al.

DATE	NR.	PROCEEDINGS
09-30-76	1	Filed complaint and issued summons.
10-27-76	2	Filed summons and marshal return of service upon : ELIAS KULUKUNDIS by same on 10-18-76 BETHEL MARINE INC by N Rowe on 10-5-76 GENERAL AMERICAN TRANSPORTATION by G. Mc Donnell on 10-13-76 BURMAH OIL by Rowe on 10-5-76 BURMAH OIL TANKERS LTD by Rowe on 10-5-76 VERMONT MARINE INC by N ROWE on 10-5-76 BURMAH OIL INC by Rowe on 10-05-76 BURMAH GAS TRANSPORTATION LTD by N Rowe on 10-05-76 SOUTHHOLD MARINE INC by N Rowe on 10-5-76 BURMAH EAST SHIPPING CORP by N . Rowe On 10-05-76 GENERAL DYNAMICS CORP by A Grani on 10-06-76 C.Y. CHEN by C Smith on 10-5-76 ENERGY TRANSPORTATION CORP by K. Smith on 10-05-76 FIRST NATIONAL CITY BANK by V. Franz on 10-05-76 CITICORP LEASING INC , by V Franz on 10-5-76 CITIMARLEASE (BURMAH LIQUEGAS) INC by V Franz on 10-05-76 CITIMARLEASE (BURMAH I) INC by V. Franz on 10-5-76 JOSEPH J CUNEO, by K Smith on 10-5-76 CITIMARLEASE (BURMAH LNG CARRIER) by J. Dents on 10-5-76 SUMMIT III INC by Dr Chen on 10-14-76 SUMMIT MARINE OPERATORS INC by Dr Chen on 10-14-76 CHEROKEE I SHIPPING CORP. by Dr Chen on 10-14-76 CHEROKEE IV SHIPPING CORP. on Dr Chen On 10-14-76 CHEROKEE III SHIPPING CORP by Dr Chen on 10-14-76 CHEROKEE II SHIPPING CORP by Dr Chen on 10-14-76 SUMMIT II Inc by Dr Chen on 10-14-76 SUMMIT I by Dr Chan on 10-14-76 CHEROKEE V SHIPPING CORP by Dr Chen on 10-14-76 LIQUEGAS TRANSPORTATION INC by C. Anderson On 10-06-76 CRYOGENIC ENERGY TRANSPORT INC by C. Anderson on 10-6-76 L N G TRANSPORT INC by C. Anderson on 10-6-76
12-03-76	3	Filed notice of special appearance & motion to dismiss by plttf U.S.A. re: an order dismissing the action for lack of jurisdiction ret. 12-10-76. Note the supporting affdvt of Samuel B Nemirow is being filed in chambers as directed by the Court.
12-03-76	4	Filed memo of law by plttf U.S.A. re: support of the motion to dismiss pages 17 & 18 of this memo are being filed in chambers as directed by the Court.
12-07-76	5	
12-06-76	6	Filed notice of motion by defts re: to dismiss pursuant to Rule 12(b) joining the motion as filed by deft U.S.A..
12-06-76	7	Filed Consent order subject to a motion to vacate by the parties the documents specified shall be filed directly with Chambers & so long as this action is pending or on appeal the parties shall not cause to published except by filing in Chambers any documents filed in this action documents etcc# 1,2,3,4,5,(a) 7,8(a) or 8(b) in the Appendix. etc. Knapp J.
12-7-76	8	Filed affdvt. of Wm. Bailey re: service of document upon Dorothy S. Greenberg by registered mail on 12-3-76.
12-7-76	9	Filed affdvt. of Thomas F. Callahan of service of consent order dated 10-2-76 on 12-3-76 on parties indicated.
12-7-76	10	Filed affdvt. of Ann. P. Hesselink of service of Consent order dated 12-2-76 on Ms. Greenberg on 12-3-76.
12-15-76	11	Filed Reply affdvt by U.S.A. re: support of the gov't's motion to dismiss. B

A-3

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF
S.A.DEFENDANT
BURMAH OIL

76 CIV 4351

DOCKET NO. _____

PAGE ____ OF ____ PAGES

DATE	NR.	PROCEEDINGS
23-76	12	Filed memorandum & order the complaint is dismissed for lack of jurisdiction & the order sealing certain documents is vacated sua sponte. settle order. Knapp J. 70 APRIL 12.
-7-76	13	Fld memo of law by plttf re: support of its proposed counter order.
-7-77	14	Fld affdvt of Samuel Nemirow with exhibits re: describe the information known to MarAd prior to this action etc.
7-77	15	Fld affdvt of R.B. Dannenberg by plttf re: opposition to the motion of U.S.A to dismiss the action.
-7-77	16	Fld supplemental affdvt of R.B. Dannenberg by plttf re: further support of its opposition to the motion to dismiss.
-7-77	17	Fld memo of law by plttf re: opposition to the motion to dismiss.
1-07-77	18	Fld Order & Judgment, Jdgmt to entered against plttf Greenberg dismissing the complaint without costs & the Courts order of 12-02-76 is vacated no documents filed in this action are to be sealed. Knapp J. Jdgmt Entered 1/10/77 Clerk m/n
1-19-77	19	Fld Notice of Appeal by plttf Greenberg to the U.S.C.A from the order & jdgm. dated 1/6/77 & entered on 1/10/77. copy to all parties.

A TRUE COPY

RAYMOND E. BURGHARDT, Clerk

By

Deputy Clerk

VERIFIED COMPLAINT

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, by Dorothy S.
Greenberg, for herself as well as for the
United States of America,

Plaintiff,

-against-

THE BURMAH OIL COMPANY LIMITED,
BURMAH OIL INCORPORATED,
BURMAH OIL TANKERS LIMITED,
BETHEL MARINE, INC.,
SOUTHOLD MARINE, INC.,
VERMONT MARINE, INC.,
BURMAST EAST SHIPPING CORP.,
BURMAH GAS TRANSPORTATION LIMITED,
ELIAS J. KULUKUNDIS,
SUMMITT MARINE OPERATIONS, INC.,
SUMMITT I, INC.,
SUMMITT II, INC.,
SUMMITT III, INC.,
CHEROKEE I SHIPPING CORPORATION,
CHEROKEE II SHIPPING CORPORATION,
CHEROKEE III SHIPPING CORPORATION,
CHEROKEE IV SHIPPING CORPORATION,
CHEROKEE V SHIPPING CORPORATION,
ENERGY TRANSPORTATION CORPORATION,
C. Y. CHEN,
JOSEPH J. CUNEO,
JEROME SHELBY,
CRYOGENIC ENERGY TRANSPORT, INC.,
LNG TRANSPORT INC.,
LIQUEGAS TRANSPORT INC.,
JAMES DURBIN,
JOHN C. BULLITT,
FIRST NATIONAL CITY BANK
CITICORP LEASING, INC.,
GENERAL AMERICAN TRANSPORTATION CORP.
GENERAL DYNAMICS CORPORATION,
CITIMARLEASE (BURMAH I), INC.,
CITIMARLEASE (BURMAH LNG CARRIER), INC.,
CITIMARLEASE (BURMAH LIQUEGAS), INC. and
CITICORP

Defendants.

JUDGE KNAPP

96 CIV. 4351

VERIFIED COMPLAINT

SEP 30 4 28 PM '76
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Plaintiff for herself as well as for the United States of
America, by her attorneys, LIPPER, LOWEY & DANNENBERG and BURTON L.
KNAPP, and NEWMAN, SHOOK & NEWMAN, for her complaint, alleges upon
information and belief, except with respect to the allegations contained
in Paragraph 4 which are alleged upon knowledge.

Jurisdiction and Venue

1. This action arises under the United States statute known as The False Claims Act, 31 U.S.C. §§231-233, 235 for deliberate violations of and under the United States "Shipping Act 1916," as amended, 46 U.S.C., §801 et seq. and for deliberate violations of and under the Merchant Marine Act of 1936, as amended, 46 U.S.C. §1101, et seq.

2. Jurisdiction rests under Section 31 U.S.C. §232(a), as substantially all of the defendants are found within the jurisdiction of the Southern District of New York. All of the documents and information contained therein, listed on Schedule A annexed, are not in possession of the United States, the Attorney General thereof, or any of its agencies or instrumentalities.

3. The claims asserted herein arise out of acts and transactions in furtherance of the violations that have occurred in substantial part within the Southern District of New York.

The Parties

4. Plaintiff Dorothy S. Greenberg, a citizen of the United States and a resident of the City, County and State of New York, brings this action for herself as well as for the United States of America.

5. The Burmah Oil Company Limited ("BOCL") is a corporation organized and existing under the laws of Scotland. BOCL is an international oil company engaged in various branches of the petroleum industry, including the transportation of crude oil and natural gas. It does business in the United States including within the Southern District of New York, and has a place of business at 1185 Avenue of the Americas, New York, New York. At times it has conducted certain of its business through the New York City law firm of Simpson Thacher & Bartlett. BOCL borrows substantial monies from United States banks, including those located within the Southern District of New York.

6. The defendant Burmah Oil Incorporated ("Burmah Oil") is a wholly owned subsidiary of BOCL, and is a Delaware corporation, having its principal place of business at 1185 Avenue of the Americas, New York, New York.

7. (a) The defendant Burmah Oil Tankers Limited ("Burmah Tankers") is a wholly owned subsidiary of BOCL, incorporated under the laws of Bermuda, and having its principal place of business at 1185 Avenue of the Americas, New York, New York. Unless otherwise alleged, BOCL, Burmah Oil and Burmah Tankers are hereinafter referred to collectively as "Burmah.").

(b) The defendants Bethel Marine, Inc., Southhold Marine, Inc. and Vermont Marine, Inc. (the "Marine Companies") are Delaware corporations which are affiliates or wholly owned subsidiaries of one or more of the Burmah Corporations, with their principal offices at 1185 Avenue of the Americas, New York, New York, and were formed solely to act as "dummy" time charterers of certain vessels as more particularly hereinafter alleged at paragraphs "31" through "35", infra.

8. The defendant Burmast East Shipping Corp. ("Burmast") is a Liberian corporation and a majority owned subsidiary of Burmah Tankers with an office in New York, New York; defendant Burmah Gas Transportation Limited ("BGT") is a Liberian corporation and wholly owned subsidiary of Burmah Oil, with an office in New York, New York.

9. Defendant Elias J. Kulukundis, a resident of the City of New York, at all relevant times until January 1974 was Chairman of the Board, Chief Executive Officer and a controlling shareholder of Burmah and dominated these corporations; he is the former President of Burmah Tankers. His present business address is 630 Fifth Avenue, New York, New York.

10. (a) Each of the defendants Summitt Marine Operations, Inc., Summitt I, Inc., Summitt II, Inc. and Summitt III, Inc. (the "Summitt Companies") and each of the defendants Cherokee I Shipping Corporation through Cherokee V Shipping Corporation (the "Cherokee Corporations") are Delaware corporations with their principal places of business c/o Energy Transportation Corporation, 540 Madison Avenue, New York, New York.

(b) The Summitt Companies and Cherokee Companies were organized at the direction of Burmah and Kulukundis by certain New York City law firms.

(c) Prior to November 1973, John C. Bullitt ("Bullitt"), a partner of Shearman and Sterling ("S and S") and a New York resident and citizen, was the President of each of the Cherokee Companies and was held out as the owner of all of the then outstanding common stock (500 shares) of each of the Cherokee Companies. The other officers and directors of each of the Cherokee Companies were also members of S and S.

(d) Bullitt had no real individual interest in the Cherokee Companies, but held the stock as nominee for and as an accommodation to Burmah. Bullitt understood that he would dispose of the stock of the Cherokee Companies in accordance with instructions of Kulukundis and that said stock was owned and held by him subject to the control and direction of Burmah.

(e) In November 1973 upon the directions of Kulukundis and Burmah, all of the common stock in each of the Cherokee Companies was transferred by Bullitt to Eli Ellis ("Ellis"), a partner in the New York City law firm of Hill Betts and Nash, and subsequently by him upon the directions of Kulukundis and Burmah to the defendant Energy Transportation Corporation ("Energy").

11. (a) Defendant Energy is a Delaware corporation with its principal place of business at 540 Madison Avenue, New York, New York, and is a holding company for the Summitt Companies and the Cherokee Companies.

(b) Defendant C. Y. Chen is Chairman of the Board and Chief Executive Officer of Energy and maintains an office in New York City. Chen and members of his family own 80% of the common stock of Energy.

(c) Chen is a long time business associate of Kulukundis and often partner and joint venturer with him.

(d) Energy was organized by Chen in agreement with Kulukundis to act as a holding company for United States citizen operating companies that were in fact not bona fide operating companies but would act solely in contravention of law for the benefit of Burmah in the attempt to obtain subsidies and guarantees from the United States of America as more particularly hereinafter alleged, including the Summitt Companies and the Cherokee Companies.

(e) Defendant Joseph J. Cuneo, a citizen of the State of New York, is President of Energy, the Summitt Companies and the Cherokee Companies, and maintains an office at 540 Madison Avenue, New York, N. Y.

(f) Defendant Jerome Shelby ("Shelby") is a citizen of the State of New York, is Vice President and General Counsel of Energy, a stockholder thereof, and maintains an office for the practice of law in New York City with the law firm of Cadwalader, Wickersham & Taft, which firm also acts as counsel to the Summitt Companies.

12. Defendants Cryogenic Energy Transport, Inc., LNG Transport, Inc. and Liquegas Transport, Inc. (the "Cryogenic Companies") are corporations organized under the laws of the State of Delaware. The entire capital stock of the Cryogenic Companies was initially owned by defendant James Durbin, a United States citizen, who at the times was Chairman of the Board of Burmah Tankers and a director of other companies which were subsidiaries and/or affiliates of BOCL, Burmah Oil and/or Burmah Tankers. Shelby at all relevant times acted as agent for the Cryogenic Companies.

13. (a) Defendant Citicorp, a Delaware Corporation, is a diversified financial services organization and is the parent of the defendants First National City Bank, a national banking corporation; Citicorp Leasing, Inc.; Citimarlease (Burmah I) Inc.; Cimitarlease (Burmah LNG Carrier), Inc. and Citimarlease (Burmah Liquegas), Inc., all Delaware corporations, all with offices at 399 Park Avenue, New York, N. Y. (Said defendants are hereinafter collectively referred to as "FNCB").

(b) FNCB are engaged directly or indirectly through wholly owned subsidiaries in the business, among others, of financing ship construction.

(c) S and S are counsel for FNCB and have at times acted as counsel for Burmah.

14. Defendant General American Transportation Corp. ("General American") is a New York corporation with a principal office at 380 Madison Avenue, New York, New York and, among other businesses, engages in financing of ship construction.

15. General Dynamics Corporation ("Dynamics") is a Delaware corporation with its principal executive office at St. Louis, Missouri and is engaged, through its Quincy, Massachusetts shipbuilding division, in the construction of liquefied natural gas tankers for commercial use and in the overhaul and repair of commercial and naval vessels.

16. The defendants named herein are not in the military or naval forces of the United States of America or in the militia or called into or actually employed in the service of the United States.

Background and History of
Underlying Transactions and
the Conspiracy to Deliberately
Defraud the United States
Government

17. At some time in 1972 Burmah decided to enter into the business of ocean transportation of liquefied natural gas ("L.N.G.").

18. L.N.G. is natural gas converted by pressure and cooling to a liquid state at a temperature of minus 259°F. As a liquid, it occupies approximately 1/600th of its volume as a gas and can be economically shipped over long distances in specially designed ships ("vessels").

19. Burmah in 1972 did not have the necessary vessels and had to acquire them. Burmah concluded to have ships constructed for them.

20. On or about June 26, 1972 Burmah concluded its first agreement for the transportation of L.N.G. Burmah entered into a Transportation Agreement with a joint venture of Public Service Electric & Gas Company of New Jersey and Algonquin Gas Transmission Company (collectively referred to as "Easco"). That Easco Transportation Agreement required Burmah

to furnish from three to five of L.N.G. vessels to transport L.N.G. from Africa (Algeria) to the East Coast of the United States (New York and New Jersey based terminals) for a period of twenty-two years.

21. On or about September 23, 1973, Burmah, acting through Burmast, entered into a second Transportation Agreement. Pursuant to a Transportation Agreement with Perusahaan Perlamagangan Minjah Dan Gas Bumi Negara ("Pertamina"), an Indonesian national oil and gas company Burmah through Burmast agreed to furnish up to eight of L.N.G. vessels to transport L.N.G. from Indonesia to Japan for a period of twenty years.

22. At the time Burmah entered into the Easco Transportation Agreement, Burmah and Kulukundis determined that the vessels should be built in a United States shipyard so as to attempt to take advantage of and attempt to benefit from

(i) United States Construction-Differential Subsidies ("C.D.S. Financing"), authorized under Title V of the Merchant Marine Act of 1936 (46 U.S.C. §§1151-1161), and

(ii) United States Guaranteed Loans under Title XI of the Merchant Marine Act of 1936 ("Title XI Financing") (46 U.S.C. §§1271-1276).

23. (a) Only citizens of the United States, as defined in the United States Shipping Act, 1916 and under the Merchant Marine Act of 1936 are eligible for C.D.S. Financing or for Title XI Financing. This fact was known to Burmah and Kulukundis in 1972. Further, they knew that C.D.S. Financing is not available if the vessels would be engaged in solely foreign-to-foreign trade, e.g. between Japan and Indonesia, although Title XI financing would be available. Further, these defendants knew that it is illegal for a non-American citizen either directly or indirectly to control or to have a majority ownership interest in a corporation owning an American-flag vessel, bareboat chartering an American-flag vessel or holding a contract for the construction of a vessel being built in an American shipyard and for United States registry.

(b) A United States citizen is defined under Section 2 of the Shipping Act, 1916, as amended (46 U.S.C. §802) as follows:

- "(a) Within the meaning of this chapter no corporation, partnership or association shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States, and in the case of a corporation, unless its president or other chief executive officer and the chairman of its board of directors are citizens of the United States and unless no more of its directors than a minority of the number necessary to constitute a quorum are non-citizens and the corporation itself is organized under the laws of the United States or of a State, Territory, District, or possession thereof, but in the case of a corporation, association, or partnership operating any vessel in the coastwise trade the amount of interest required to be owned by citizens of the United States shall be 75 per centum.
- (b) The controlling interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if the title to a majority of the stock thereof is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if the majority of the voting power in such corporation is not vested in citizens of the United States; or (c) if through any contract or understanding it is so arranged that the majority of the voting power may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or, (d) if by any other means whatsoever control of the corporation is conferred upon or permitted to be exercised by any person who is not a citizen of the United States.
- (c) Seventy-five per centum of the interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if the title to 75 per centum of its stock is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if 75 per centum of the voting power in such corporation is not vested in citizens of the United States; or (c) if, through any contract or understanding, it is so arranged that more than 25 per centum of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or (d) if

by any other means whatsoever control of any interest in the corporation in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a citizen of the United States."

A United States citizen for purposes of the Merchant Marine Act of 1936 is defined to include

"a corporation, partnership, or association only if it is a citizen of the United States within the meaning of Section 802 of this Title, . . ." (46 U.S.C. §1244)

24. (a) Burmah and Kulukundis thereupon entered upon a plan and conspiracy with certain of the defendants, aided and abetted by other of the defendants, as more particularly herein-after set forth, to deliberately defraud the United States in connection with applications for C.D.S. Financing and Title XI Financing for construction of vessels to transport L.N.G. by, among other things, causing the applicants for said financing to falsely be given the appearance of United States citizens, when in truth, in fact, the applications were for the benefit of BOCL, its subsidiaries, and affiliates which were the real parties in interest.

(b) Burmah in actuality dictated the terms of the transactions hereinafter described, arranged the financing, and underwrote and guaranteed the costs in connection with substantially all the transactions herein alleged.

25. (a) Pursuant to the foregoing plan and conspiracy, Burmah, Kulukundis, Chen, Cuneo and certain of the other individual defendants in 1972 caused the Cryogenic Companies and the Summit Companies to be organized and in 1973 caused the Cherokee Companies to be organized.

(b) All costs and expenses of the Cryogenic Companies, the Summit Companies and the Cherokee Companies, including officers' salaries and legal fees, among other expenses, have been borne by Burmah either directly or indirectly.

In certain circumstances, the expenses have taken the form of charges to the capital costs of the vessels which Burmah ordered to be billed and for which Burmah ultimately pays.

(c) The Cryogenic Companies and the Cherokee Companies were formed and organized for the express purpose of

(i) making application to the Maritime Administration of the United States ("MarAd") for C.D.S. Financing and Title XI Financing, and

(ii) entering into shipbuilding construction contracts with the Quincy, Massachusetts shipbuilding division of General Dynamics, all for the benefit of and subject to the control of Burmah.

26. (a) Burmah in September 1972 and in October 1975, respectively caused the Cryogenic Companies first, and then the Cherokee Companies to enter into contracts with General Dynamics for the construction of vessels at Quincy, Massachusetts to transport L.N.G.

(b) Each of the Cryogenic Companies contracted for the construction of one 125,000 cubic meter capacity L.N.G. vessel for a total contract price, including C.D.S. Financing of \$89,575,000 each, or \$268,725,000 in the aggregate.

(c) Each of the Cherokee Companies contracted for the construction of a L.N.G. vessel at a fixed price ranging from \$94 million for each of the Cherokee I through III Companies' vessels; \$93.6 million for the Cherokee V Company's vessel; and \$98 million for the Cherokee IV Company's vessel. Performance by these Cherokee Companies under the Construction Agreement was guaranteed by Burmah to the extent of at least \$62.5 million.

(d) The aforesaid contracts involved construction of at least eight 125,000 cubic meter tankers to carry L.N.G. and these contracts aggregate approximately \$750 million.

(e) Construction work on each of the tankers is at various stages. One ship was launched in December 1975 and General Dynamics has publicly reported that work on the additional ships "is proceeding satisfactorily." Keels have been laid for all of the eight vessels. As of July 31, 1975, the percentage of contract work completed on each of the first five vessels were as follows:

Cherokee I	29.63%
Cherokee II	13.12%
Cherokee III	1.77%
Cherokee IV	.87%
Cherokee V	6.36%

In the one year since July 31, 1975 which has passed, each of the contracts for the eight vessels has progressed substantially.

(f) In its financial statements for the year ended December 31, 1975, General Dynamics reported that costs incurred in the foregoing construction programs to December 31, 1974 and December 31, 1975 amounted to \$109 million and \$260 million, respectively, less progress payments received from Burmah or on their behalf of approximately \$95 million and \$239 million, respectively. A substantial portion of these payments was subsidized and/or guaranteed by the United States of America under C.D.S. Financing or Title XI Financing.

(g) Under the provisions of the construction contracts, title to the vessels while under construction remains with General Dynamics until delivery, at which time it passes to the purchasers under the contracts, i.e. Cherokee Companies and the Cryogenic Companies or their respective assigns. The beneficial owners are Burmah.

27. (a) In August 1973, the Cherokee Companies, except Cherokee V Shipping Corporation, made applications to MarAd for C.D.S. Financing and Title XI Financing. Amended applications were filed in October 1973. In February 1974 Cherokee V Shipping Corporation filed with MarAd an application for C.D.S. Financing and Title XI Financing.

(b) In connection with the applications on behalf of the Cherokee Companies, except Cherokee V Shipping Corporation, Bullitt represented to MarAd that he was the legal and beneficial owner of all of the common stock of each of the applicant corporations and he executed and caused to be delivered affidavits of United States corporate citizenship.

(c) In fact, in so doing he was acting on behalf of Burmah and at the instructions of Burmah and Kulukundis.

(d) The application and affidavits for the Cherokee Companies were false and fraudulent.

(e) The nominal owners of the Cherokee Companies have never made a real or tangible investment in those companies or in any of the ship construction projects or the financing thereof which are the subject of this action.

28. The Cherokee Companies are not citizens of the United States within the meaning of the Shipping Act, 1916 and the Merchant Marine Act of 1936 and they do not qualify for C.D.S. Financing or Title XI Financing.

29. (a) In July 1972 the Cryogenic Companies made applications to MarAd for C.D.S. Financing and Title XI Financing.

(b) In connection with the applications on behalf of the Cryogenic Companies, Durbin, or others presently unknown, acting under his direction and under the direction of Burmah and Kulukundis, represented that he was the legal and beneficial owner of all the common stock of each of the applicant corporations and he or persons acting pursuant to his instructions executed and caused to be delivered affidavits of United States corporate citizenship.

(c) In fact, in so doing he was acting on behalf of Burmah and at the instructions of Burmah and Kulukundis.

(d) The application and affidavits for the Cryogenic Companies were false and fraudulent.

(e) The nominal owners of the Cryogenic Companies have never made a real or tangible investment in those companies or in any of the ship construction projects or the financing thereof which are the subject of this action.

30. The Cryogenic Companies are not citizens of the United States within the meaning of the Shipping Act, 1916 and the Merchant Marine Act of 1936 and they do not qualify for C.D.C. Financing or Title XI Financing.

31. Pursuant to the aforesaid plan and conspiracy and in an effort to give the transaction a semblance of legality, Burmah and Kulukundis directed Durbin to transfer all of the stock of the Cryogenic Companies to the Wilmington Trust Company of Wilmington, Delaware ("Wilmington Trust", sometimes hereinafter referred to as Owner-Trustee) and then to execute and implement the following financing plan:

(a) with the understanding that the Cryogenic Companies' vessels would be used for the Easco Transportation Agreement, the Cryogenic Companies' Title XI applications had set forth a form of financing known as Leverage Lease Financing. Under this type of financing plan, the construction contracts between the Cryogenic Companies and General Dynamics were to be assigned and, in fact, were assigned to a United States citizen owner-trustee who would purport to hold legal title to the construction contracts during the period of construction, and thereafter to hold legal title to the vessels upon delivery, allegedly for the benefit of institutional investors ("the alleged equity-participants"), but in reality for the benefit of Burmah.

(b) The Owner-Trustee would agree, and in fact did agree, to borrow funds sufficient to construct the vessels and pay all interest and other costs related to the construction of the vessels which indebtedness would be evidenced and is in fact evidenced by short term promissory notes maturing upon the date of delivery of the constructed vessels.

(c) The promissory notes were guaranteed by the United States of America pursuant to Title XI Financing, to the extent of 75% of the statutorily defined "actual cost of construction of the vessels." The balance of the notes (securing the excess over and above the 75%) were guaranteed by BOCL and Burmah Oil.

(d) Upon delivery of the vessels, it is intended that the purported United States citizen, who would be then acting as Owner-Trustee of the vessels, would satisfy the short term notes by virtue of the proceeds from the sale of long term ship mortgage bonds guaranteed by the United States under Title XI Financing to the extent of 75% of the statutorily defined "actual cost", with the balance in excess thereof to be satisfied from equity contributions of the alleged equity-participants.

(e) Because the Owner-Trustee is a lending institution and has no ship operating capabilities, the Owner-Trustee has agreed to lease the vessels (commencing with their delivery from General Dynamics) under long term "bareboat" charters, to United States citizen purported operating companies, namely the Summit Companies which companies, in turn, have agreed to sublease the vessels to Burmah or its subsidiaries under the long term charter arrangements with the Marine Companies. The purported operating companies are not bona fide operating companies but ones organized solely for purposes of this financing plan, to benefit Burmah.

(f) The time charter payments by Burmah are to be fixed at a rate sufficient to cover

(i) all costs and expenses of the United States citizen purported operating company plus a profit for that purported operating company;

(ii) payment of principal and interest on the Title XI guaranteed ship mortgage bonds; and

(iii) an amount to provide a return on and recovery of the alleged equity-participant's investment.

32. The foregoing financing plan, as alleged at paragraphs 31(a) to (f) is a deliberate fiction and subterfuge to avoid the intent and provisions of the Merchant Marine Act of 1936, namely that the funds of the United States Government under C.D.S. Financing and Title XI Financing be used for the benefit of only truly United States citizens, and not foreign citizens such as BOCL, the real party in interest. The Owner-Trustee, FNCB, General American and the alleged other equity-participants and lenders are only acting as lenders and financing vehicles and not as bona fide equity owners; the interpositioning of alleged United States citizen operating companies, as aforesaid, is a deliberate artifice and subterfuge.

33. (a) In August 1974 documents establishing the legal commitments of all parties to the plan of financing, as described in paragraphs 31(a) through (f) and 32 were executed by Wilmington Trust, FNCB, General American, the Summitt Companies, the Marine Companies, Burmah Tankers, BOCL and others; the construction contracts with General Dynamics were assigned by the Cryogenic Companies to the Wilmington Trust and to FNCB, to General American and to the First National Bank of Chicago (not a named defendant but a co-conspirator), acting directly or through wholly owned subsidiaries, some of which are named defendants and some of which are the alleged equity-participants. In reality, the Wilmington Trust with the equity-participants were in fact only lenders and financing vehicles as alleged in paragraphs 31 and 32.

(b) Burmah, Kulukundis, Chen, Cuneo, Shelby and Energy agreed that Energy through its subsidiaries the Summitt Companies would be the alleged United States operating companies which would charter the vessels to Burmah and the Marine Companies in accordance with the proposed plan and conspiracy as hereinbefore alleged.

(c) In order to further implement the foregoing, Burmah, Kulukundis, Chen, Cuneo and Shelby caused the Cryogenic Companies to assign the construction contracts with General Dynamics to Energy and General Dynamics agreed to the foregoing.

34. The Easco Transportation Agreement and the construction contracts between the Cryogenic Companies and General Dynamics and the aforesaid financing plan were made possible only as a result of BOCL's agreeing to guarantee all of the aforesaid construction financing and chartering arrangements.

35. (a) The financing arrangements originally contemplated for the vessels in connection with the Pertamina Transportation Agreement were to parallel those contemplated for the vessels in connection with the Easco Transportation Agreement, as aforesaid. Construction contracts and Title XI applications were to be assigned by the Cherokee Companies to an owner-trustee for three institutional lenders, who would supply a portion of the capitalized costs of the vessels at delivery; the substantial balance thereof to be provided by the sale of Title XI guaranteed bonds issued in the name of the owner-trustee. During the course of construction, the vessels were to be financed by Title XI guaranteed notes issued in the name of the owner-trustee and the balance by BOCL and Burmah Oil.

(b) Preliminary commitments by the United States of America to guarantee obligations in connection with Title XI Financing were received for the first four vessels on November 7, 1973 and for the fifth vessel on May 21, 1974, based upon the applications as alleged at paragraph 27 hereof.

(c) Pending the receipt of financing commitments from the institutional lenders, BOCL and Burmah Oil obtained a temporary interim construction loan for the benefit of the Cherokee Companies, which monies were paid to General Dynamics as progress payments in connection with the construction contracts for the vessels.

(d) The financing commitments from institutional lenders were not forthcoming by late 1975, and BOCL and Burmah Oil have since January of 1975 loaned more than \$105 million to the Cherokee Companies for purposes of repayments on temporary interim loans and for monthly progress payments to General Dynamics, as well as for other expenses related to the construction of the vessels.

(e) The foregoing loans by BOCL and Burmah Oil to the Cherokee Companies are evidenced by unsecured promissory notes of the Cherokee Companies containing certain affirmative covenants and negative covenants. Under the affirmative covenants, the Cherokee Companies, among other things, agree to provide financial information to BOCL and Burmah Oil; pay all taxes, assessments and other government levies, all lawful claims and trade bills, etc. so that the assets of the companies are not impaired; maintain books and records and allow BOCL and Burmah Oil reasonable inspection thereof; perform all obligations under the construction contracts; maintain their corporate existence; and use the proceeds of the loans only for the construction and financing of the vessels and expenses related thereto.

Under the negative covenants, among other things, the Cherokee Companies agree not to, without the consent of BOCL and Burmah Oil, incur any indebtedness other than (i) notes payable to BOCL and Burmah Oil or (ii) indebtedness guaranteed by the U. S. Government to finance the construction of the ship; create or suffer to exist any liens or encumbrances on their assets [subject to limited exceptions not here relevant]; give any guarantees with respect to obligations of others; make any loans or advances; make any investments or allow new contributions to their own capital; enter into any consolidation, merger or sale of assets; declare dividends or otherwise distribute assets; or enter into any business other than that related to the construction, financing and chartering of the vessels.

36. In connection with the construction of the vessels for the Easco Transportation Agreement, the United States of America has been caused to pay out in excess of \$60 million and guarantee construction loans for the construction of those vessels, and in connection with the vessels being constructed for the purposes of the Pertamina Transportation Agreement, the United States of America is about to be caused to make additional commitments of guarantee and to pay out monies for the construction of those vessels.

37. All of the defendants have benefitted from the conspiracy of Burmah and Kulukundis to obtain for Burmah United States Government financing as aforesaid, well knowing that under the law Burmah and particularly BOCL, as a foreign citizen, is not entitled. General Dynamics has proceeded with the construction contracts knowing substantially all of the facts as alleged herein. FNCB, GATX Corp., General American and GATX Leasing with knowledge of the facts alleged herein have made substantial monies from the financing. Kulukundis, Chen, Cuneo and Shelby, by interpositioning Energy as the purported operating company who will charter vessels to Burmah upon their completion and delivery, have benefitted and will continue to benefit from the profits to be made from the charter arrangements as well as by other secret agreements among themselves.

38. The MarAd Administration, or at least some of its personnel, have closed their eyes to the realities of the arrangements and have permitted the defendants to proceed as alleged herein, and they have in the past permitted other foreign citizens to wrongfully benefit from C.D.S. Financing and Title XI Financing, directly or indirectly.

39. (a) In an effort to cure the illegalities that exist in the financing arrangements as heretofore alleged at paragraphs 31, 32, 33 and 35(a) and (b), BOCL, Burmah Oil, BGT, General Dynamics, the Cherokee Companies, Energy, Kulukundis, Chen, Cuneo and Shelby under

date of August 27, 1976 have proposed to MarAd a new means of financing the vessels under construction to be used for purposes of the Peteramina Transportation Agreement and have requested a modification of the preliminary commitments for Title XI Financing issued by the United States of America as more particularly alleged at paragraph 35(b) hereof. That proposal submitted over the signature of Shelby, as Vice President of each of the Cherokee Companies and joined in by General Dynamics, is annexed hereto as Exhibit A.

(b) The aforesaid application is as much a subterfuge as the prior financing vehicles in view of the fact that the ultimate beneficial users of the vessels and real parties in interest are BOCL, its subsidiaries and affiliates, most of whom are foreign citizens, and furthermore, all of the essential facts have not been disclosed in said application.

The Illegality and the
Violations Under the
False Claims Act

40. (a) The Shipping Act of 1916, as amended, and particularly Sections 2, 9 and 37 thereof, provide, in effect, that it shall be illegal for a non-American citizen, e.g. a foreign individual or foreign corporation, either directly or indirectly

(1) to control, or

(2) to have a majority ownership interest in
a corporation

(i) owning an American flag vessel, or

(ii) bareboat chartering an American flag
vessel, or

(iii) holding a contract for the construction of a vessel being built in a shipyard in the United States and for United States registry.

(b) The Merchant Marine Act of 1936 makes it illegal for the United States of America to grant C.D.S. Financing or Title XI Financing to or for the benefit of a non-United States citizen, but, specifically Title XI guarantees may be applied for only by citizens of the United States (46 U.S.C. §1272(a)); Title XI guarantees may be issued only for obligations to aid in construction of vessels owned by citizens of the United States (46 U.S.C. §1274).

(c) All of the commitments from MarAd, the subsidies, the guarantees and payments, as alleged in this complaint, were for the benefit of foreign citizens and particularly BOCL, the real party in interest in all of the aforesaid transactions, and accordingly are illegal.

41. (a) The defendants and each of them named herein at relevant times, as alleged herein, have deliberately made or caused to be made, presented or caused to be presented, or aided and abetted therein, for approval and payment by MarAd and the United States of America, claims for C.D.S. Financing and/or Title XI Financing, knowing such claims to be false or fraudulent, and each knowing that he or it would directly or indirectly benefit thereby.

(b) FNCB and General American would not have participated in the financing of the construction of the vessels but for the Title XI Financing including the guarantees and commitments for guarantees from the United States of America. Each of them knew that the real parties in interest were Burmah (including BOCL) and their subsidiaries and affiliates, and accordingly they have further aided and abetted the violations herein complained of.

42. These defendants for the purpose of obtaining or aiding to obtain written commitments for C.D.S. Financing and/or Title XI Financing in connection with the construction of L.N.G. vessels by General Dynamics at Quincy, Massachusetts for the benefit of Burmah, as well as their own respective, individual and corporate benefits, deliberately

made, used or caused to be made, or used false applications, accounts, claims, certificates, affidavits and other documents, knowing the same to contain false and fraudulent statements and knowing same to be part of an artifice, plan, conspiracy and scheme to defraud the United States of America.

43. These defendants, as aforesaid, to benefit themselves, entered into agreements, combinations and conspiracies to defraud the Government of the United States and MarAd, its officers and employees in connection with C.D.S. Financing and Title XI Financing.

44. All of the foregoing was done deliberately with the intent to obtain financing from the United States of America which would ultimately benefit these defendants directly and indirectly, and which these defendants knew could not be obtained if all the true facts had been disclosed.

45. There has not been a full disclosure to the United States of America, including the Department of Justice, or to MarAd, of all of the essential facts relating to the foregoing.

46. Burmah, Burmast, the Marine Companies, Energy, the Summitt Companies and the Cherokee Companies, the Cryogenic Companies and the individual defendants named herein are financially unable to respond to the United States of America in the double damages to which it is entitled pursuant to Section 231 of the False Claims Act, by reason of the conduct complained of herein.

47. The plaintiff for herself as well as for the United States has no adequate remedy at law.

WHEREFORE, plaintiff on behalf of the United States of America and for herself, prays for judgment against the defendants and relief as follows:

1. that, pursuant to Section 231 of Title 31 of the United States Code, each of the defendants forfeit to the United States of America the sum of \$2,000 and in addition double the amount of

damages which the United States of America has sustained by reason of the acts complained of in this complaint;

2. that each of the defendants account to the United States of America for their participation in the transactions complained of by this complaint;

3. declaring that each of the applications of the Cryogenic Companies and the Cherokee Companies and all amendments thereto to the Maritime Administration for either C.D.S. Financing and/or Title XI Financing, heretofore filed with the Maritime Administration, are void and illegal and enjoining the defendants permanently from obtaining, directly or indirectly, any monies from the United States of America in connection with the construction of vessels by General Dynamics for the ultimate benefit of the Burmah Oil Company Limited, any of its subsidiaries or affiliates, or any of the other Burmah defendants named herein;

4. that there be declared forfeit to the United States of America the eight vessels presently being constructed by General Dynamics for Burmah.

5. that there be awarded to the plaintiff Dorothy S. Greenberg, out of the proceeds received as a result of this action or of any settlement of the claims involved herein

(i) if the action shall be carried on by the United States as provided within Section 232 of Article 31 of the United States Code, an amount which in the judgment of the Court is fair and reasonable compensation to the plaintiff for disclosure of the information or evidence not in the possession of the United States when this suit was filed, such award in no event to exceed one-tenth of the proceeds received as a result of this action or any settlement thereof;

(ii) in the event this action is not carried on by the United States but is prosecuted by the plaintiff to final judgment or to settlement, an award to the plaintiff out of the proceeds thereof, which in the judgment of the Court is fair and reasonable compensation, such award in no event to exceed one-fourth of the proceeds thereof.

6. An award to the United States for its costs; or if the action is prosecuted by the plaintiff, an award to the plaintiff of her costs, disbursements and expenses incurred in the prosecution of this action, including reasonable attorneys' fees and accountants' fees.

LIPPER, LOWEY & DANNENBERG and
BURTON L. KNAPP

By: *Richard B. Dannenberg*
A Member of the Firm
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Of Counsel:
Frank G. Newman, Esq.
Newman, Shook & Newman

STATE OF NEW YORK)
) ss.:
 COUNTY OF NEW YORK)

DOROTHY S. GREENBERG, being duly sworn, deposes and says that she is the individual plaintiff herein named who brings this action on behalf of the United States of America; that she has caused the foregoing Complaint to be prepared, has read the foregoing and knows the contents thereof; that the statements contained therein are true except as to those matters alleged upon information and belief and as to them she believes them to be true.

The sources of her information are various documents in her and her attorneys' possession including memorandum from files of Burmah Oil Company Limited; memorandum from Richard W. Kurrus to John J. McMullen, confidential memorandum from Richard W. Kurrus to John J. McMullen, memorandum of law by law firm of Kurrus and Jacobi; complaint for action in Supreme Court of the State of New York; a folder entitled "News Releases" containing a compilation thereof dealing with the subject matter of this action, and memorandum of law to Dr. John J. McMullen from Seymour & Patten re New York Law Of Directors' Self-Dealing (L. Padron and ONG matters).

Dorothy S. Greenberg
 DOROTHY S. GREENBERG

Sworn to before me this
 29th day of September, 1976

Harry B. Charal

HARRY B. CHARAL
 Commissioner of Courts
 City of New York
 Certificate Filed in New York County
 Commission Expires June 1, 1977

SCHEDULE A TO COMPLAINT - STATEMENT OF DISCLOSURES ON
BEHALF OF DOROTHY S. GREENBERG PURSUANT TO SECTION
232(C) OF TITLE 31 OF THE UNITED STATES CODE

STATEMENT OF DISCLOSURES ON
BEHALF OF DOROTHY S. GREENBERG
PURSUANT TO SECTION 232(C) OF
TITLE 31 OF THE UNITED STATES CODE

TO: The Attorney General of
the United States
Washington, D. C.

DOROTHY S. GREENBERG, residing at 240 West 75th Street,
New York, New York, hereby discloses and presents to the Attorney
General of the United States, the following:

1. An undated Memorandum consisting of 17 pages
which is an internal Memorandum from the files of Burmah
Oil Company Limited.
2. A Memorandum dated May 12, 1975 from Richard W. Kurrus
to John J. McMullen consisting of three pages, the subject of
which is:

"Meeting ON Thursday Morning, May 8, 1975,
with Robert J. Blackwell, Maritime
Administrator, Assistant Secretary of
Commerce for Maritime Affairs, and
Samuel Nemirow, Assistant General Counsel,
Maritime Administration, and Stanley J.
Wilson, General Manager, Burmah Oil Ltd.,
and Richard W. Kurrus"
3. A confidential Memorandum dated August 21, 1975
from Richard W. Kurrus to John J. McMullen consisting of five
pages.
4. Memorandum of Law for Burmah Oil Tankers Limited
dated September 16, 1975 by the law firm of Kurrus and Jacobi,
Washington, D. C. consisting of sixty-three pages and an Appendix
(consisting of a Letter Agreement under date of November 7, 1973
executed December 12, 1973 and form of promissory note - six pages).

5(a) A Complaint for an action in the Supreme Court of the State of New York against Elias J. Kulukundis, et al.

5(b) A Complaint for an action in the Supreme Court of the State of New York, County of New York entitled

"THE BURMAH OIL COMPANY LIMITED and
BURMAH OIL INCORPORATED,

Plaintiffs,

-against-

ENERGY TRANSPORTATION CORPORATION,
C. Y. CHEN, JOSEPH J. CUNEO, JEROME
SHELBY, CHEROKEE I SHIPPING CORPORATION,
CHEROKEE II SHIPPING CORPORATION,
CHEROKEE III SHIPPING CORPORATION,
CHEROKEE IV SHIPPING CORPORATION and
CHEROKEE V SHIPPING CORPORATION,

Defendants."

6. A folder entitled "News Releases" containing a compilation thereof which dealt with the subject matter of the action, consisting of some sixty-six pages.

7. A Memorandum of Law to Dr. John J. McMullen from Seymour & Patten re New York Law of Directors' Self-Dealing (L. Padron and ONG Matters).

8(a) A Memorandum dated July 28, 1975 re interview with Elias J. Kulukundis.

8(b) A Memorandum dated November 14, 1975 entitled Interview with N.J.D. Williams.

Dated: September 29, 1976

Dorothy S. Greenberg
DOROTHY S. GREENBERG

ITEM 1 OF SCHEDULE A TO COMPLAINT - UNDATED INTERNAL
MEMORANDUM FROM FILES OF BURMAH OIL COMPANY LIMITED

The basic problem that exists with respect to the so-called Burmah LNG deal is that it has been structured in such a way that is essentially unviable and economically unfeasible for Burmah. Mr. Elias Kulukundis has apparently given away substantial pieces of the deal to individuals who are contributing nothing of a tangible nature to it. A restructuring is not a simple matter for many reasons, but a restructuring is necessary - it is our only chance to save the deal. Because many of the underlying facts on several aspects of the overall deal are presently unknown to us, a definite plan for restructuring or putting the deal back on a sound basis or developing any other definite strategy for protecting Burmah's interest is not possible at this time.

Even though the formulation of a precise strategy is impossible at this time, we are moving ahead as purposively as possible. We are proceeding to develop the relevant facts which is difficult because many files appear to be missing and the principal persons involved in the original structuring of the LNG deal are no longer with Burmah. We are unaware of the extent to which certain individuals or companies may have been involved in improprieties and therefore it would be most improvident to make any settlement or new deal with either (A) The Energy people, (B) General Dynamics or (C) the participants in Burmah until we have uncovered the relevant facts. Nevertheless, our objectives can be stated. They are:

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1. To achieve competent and professional supervision and inspection of the ship construction program with General Dynamics by a company that will be representing Burmah's interests and not collaborating with General Dynamics.
2. To reformulate the transportation agreement for the Easco vessels so that there is an assurance of a reasonable profit to Burmah.
3. To obtain for Burmah an ownership interest in the Energy companies or in the American companies performing the functions that the Energy companies are supposed to perform to the extent permitted by United States law.
4. To assure that The Energy companies or the American Companies performing such functions are acting in the best interests of Burmah and are neither competitive with Burmah nor in a position where they cannot adequately represent Burmah's best interests.
5. To achieve operation of the five Cherokee vessels under a profitable transportation agreement with Pertamina which permits profits to Burmah consistent with its investment and eliminates the excrecence of those persons as participants who have provided or who will provide nothing tangible to the deal.
6. To have the ship construction contracts for the Cherokee vessels transferred from the Cherokee companies to a Marad approved trustee who will hold the contracts and take such actions thereunder as may be necessary to protect Burmah's interests.
7. To have a security interest in the Cherokee vessels transferred to a

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Harad approved trustee to be held for Burmah with such interest to be equal to the construction monies advanced by Burmah for the Cherokee vessels.

8. To assure that there is a proper control of the construction progress payments to General Dynamics and to conduct an investigation to determine that the payments which General Dynamics is demanding and which have been made are proper.
9. To make the best arrangement possible for the construction loan and permanent financing for the Cherokee vessels.
10. To bring whatever legal actions may be necessary to enforce Burmah's equitable and contractual rights in this situation, to prevent persons from wrongfully interfering with Burmah's business and to recover any monies that have wrongfully been taken from Burmah.

The inability however, to formulate a definite game plan to achieve some of these objectives is obviously disconcerting to everyone, particularly the Burmah people in Swindon. It is the purpose of this status report to state the various problems which confront us and to explore some of the options which exist.

A. Problem of Control

A substantial part of the problem concerning the structuring of this deal is caused by the laws of the United States (viz. Sections 2, 9 and 37 of the Shipping Act, 1916, as amended) which provide in effect that it shall be illegal for a non-American citizen either directly or indirectly to control or to have a majority ownership interest in a corporation owning an American-flag vessel, bareboat chartering an American-flag vessel or holding a contract for the construction of a vessel being built in an American shipyard and for United

States registry.

The construction of bulk vessels, particularly tankers and LNG vessels, under the Merchant Marine Act of 1970 program was made possible primarily because foreign companies were willing to commit themselves as the ultimate time charterers of such vessels. Thus, substantial tanker and LNG vessel construction that would not otherwise have taken place, because there was no ready or willing American time charterer, was able to go forward solely because the foreign time charterer was willing to underwrite essentially the whole deal and to guarantee the time charter payments under a so-called "hell or high water" time charter. This was the case in Title XI financing involving Maritime Fruit, Ultramar, Shell and A. J. Chandris (which deal did not go ahead) as well as Burnah as the ultimate time charterers.

It is well recognized, we believe, that these deals rest on the fiction that they are not in any way controlled by the foreign time charterer. In actuality, the foreign time charterer dictates the terms of the deal, arranges the financing and underwrites the costs. Obviously, it is unrealistic to suppose that the person underwriting the costs and entering into the guarantees will not assume any control. There is an owner-trustor, under a leverage lease arrangement, and an American company that is a bareboat charterer. As long as the financing stays in place and there is an ultimate use for the vessels, the problem of control would not arise.

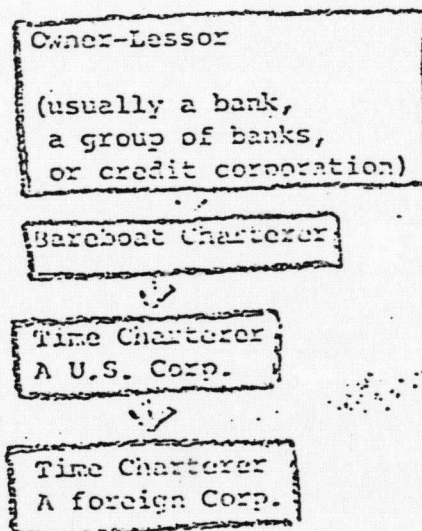
Unfortunately, in the Burnah deal, several problems have arisen which have exposed the fiction that the foreign time charterer does not have control. These problems have arisen for the following reasons:

1. The Title XI financing for the Cherokee I-V vessels disappeared;
2. Elias Kukulundis established the Energy Company and its Cherokee subsidiaries in this deal on a basis that is unfair to Burnah;

3. The Energy principles are off on an independent LNG venture of their own that is in conflict with Burnah's interests, and
4. The deal even apart from the Energy/Cherokee problem is unviable to Burnah.

The specific problem of the Energy companies will be discussed in more detail below. At this point, however, it should be generally understood that in the situation which exists, the Energy companies are providing the American companies who hold the contracts and will act as bareboat charterers under the Cherokee vessel construction and the Easco construction. Energy's subsidiaries, Summit I, II and III, are the bareboat charterers of the Easco vessels, and Energy's subsidiaries, Cherokee I-V, hold the ship construction contracts with General Dynamics for the Cherokee vessels.

As we have stated, the Energy companies are performing a typical function under these deals which are all structured basically as follows:



Even though it seems to be generally understood by everyone concerned that this is a Burnah deal and that Burnah is paying all costs and expenses and that it is Burnah's guarantees that have permitted the construction program to be

undertaken, once a problem arises with the Energy people, it is almost impossible for Burnah to force the Energy companies out of the deal because that would amount to an illegal exercise of control by Burnah. The only way that the Energy companies can be forced out of this deal, even for mismanagement, incompetence, malfeasance or even outright stealing, would be for another American company having a legitimate control position over them to dismiss them. In the case of the Easco vessels, the financing is in place and the owner-lessor (viz., GMTX, Citicorp and First Chicago) could dismiss Energy if there were reasons to do so. In the case of Cherokee vessel construction, however, no one at the present is in a position to control Energy or its Cherokee subsidiaries and they are technically free to act in an unfettered manner, which they have done. The only obligation which they owe to Burnah is a fiduciary obligation which arises because of the recognized fact that they are supposed to be acting in a manner that is consistent with Burnah's interests.

At the present time, Burnah is advancing construction monies to the Cherokee companies evidenced only by unsecured notes which monies Cherokee in turn pays to General Dynamics. This situation is entirely unsatisfactory for several reasons including the following:

1. Burnah has no security interest in the vessels;
2. By December 1975, Burnah will have advanced approximately \$115 million for the construction of the Cherokee vessels;
3. The Cherokee companies as the holders of the shipyard contracts gain more and more leverage over Burnah as each additional payment is advanced, and
4. There is substantial reason to doubt the bonafides or honesty of the Energy/Cherokee people, or at least to suspect that they are not acting in the best interests of Burnah.

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It should be understood that although the Cherokee companies hold the shipyard contracts with General Dynamics, General Dynamics itself holds the security interests in the partially completed vessels. We have suggested two steps to alleviate the above described problem concerning the Cherokee vessels, viz. :

1. The appointment of a Marad approved trustee (i.e., a domestic bank) under Section 37(c) of the Shipping Act 46 USC 835(c), to hold a security interest for Burmah in these partially completed vessels equal to the construction payments advanced by Burmah to Cherokee for payment to General Dynamics, and
2. The appointment of a Marad approved Trustee to whom the ship construction contracts would be transferred by the Cherokee companies.

It would be the stated duty of the trustees under the separate trust agreements to hold the security interest and the ship construction contracts for the benefit of Burmah and to take such actions under the contracts involved as may be required in the trustee's judgment to protect Burmah's interests.

In order for the above actions to take place, the Cherokee companies must be willing to apply to Marad for the transfer to the security interest and to transfer the ship construction contracts to the trustee. They have stated that they will not even make such application for the transfer of the security interest unless Burmah first confirms the indispensable role of their companies in the deal as the bareboat charterers of the Cherokee vessels, irrespective of whatever type of financing is ultimately arranged. In short, the Energy/Cherokee

companies insist that the only acceptable structure for the transportation arrangement is one in which they are assured the role of construction contract supervisor (at \$50,000 per ship per year plus all costs) and as bareboat charterer (at \$100,000 per ship per year plus all costs).

Burmah is unwilling to commit itself to this arrangement since there are other possible financing arrangements both with and without Title XI guarantees. For example, an alternative involving Title XI guarantees would be the equity ownership of the ships by a major U.S. oil company that would not want to be committed to the Energy/Cherokee companies as operators. In this connection, it is important to note that the Energy/Cherokee companies have zero experience as ship operators. An alternative not involving Title XI guarantees would be ownership and financing by Japan Lines -- with whom negotiations are actively in progress.

B. THE POSITION OF MARAD

It seems fair to say that MarAd has taken the position in this matter of refusing to recognize any real right of Burmah to protect its interests vis a vis the Energy companies. They say that the enforcement of any fiduciary obligation owed by the Energy/Cherokee companies to Burmah is a matter for the Courts to decide and that they are required to look only to the legal position of the Cherokee companies as the holders of the ship construction contracts. Furthermore, any pressure by Burmah upon the Cherokee companies to force them against their will to transfer the ship construction contracts or to apply for the granting of a security interest to Burmah would be viewed as an unlawful exercise of control by Burmah over the Cherokee companies.

MarAd takes the position that it must protect its ship construction program and it is most interested in avoiding any confrontation between the

Energy/Cherokee companies and Burmah that would make a legal decision on the control issue necessary and would expose in effect the fiction on which this construction program (involving foreign time charterers) is based.

C. STATUS OF EASCOGAS

Under the Eascogas Transportation Agreement of June 1972, Tankers was obligated to provide three vessels for a basic term of 20 years for the movement of LNG from Algeria to the USA. These vessels are now under construction at GD as Hulls 41, 42 and 46. The construction is subsidized by Marad and both the construction (with the minor exception of the Franklin Bank share) and the long-term financing is arranged. The vessels are scheduled for delivery by GD in November 1976, May 1977, and February 1978, respectively, at capitalized costs presently estimated at \$91.6, \$90.4, and \$90.6 million. As previously stated all agreements with respect to these vessels are firm (with the exception noted below). The vessels are owned by three leasing companies, bareboat chartered to the Summit subsidiaries of Energy and time chartered to three U.S. subsidiaries of Burmah.

Based on the rescission of the underlying sales agreement by Sonatrach on July 11, 1974, Tankers has taken the position that the June 26, 1972 Eascogas Transportation Agreement has been frustrated and that any transportation of LNG from Algeria for Eascogas by Burmah must be the subject of an entirely new agreement. We believe our legal position regarding frustration is sound in view of the specific language of Article II (2.1) of the T. A. Note that Burmah is not "terminating" the Eascogas T.A. We have simply notified the other parties, including the construction lender, that the original T.A. is frustrated. Tankers has told the Eascogas companies that it is willing to discuss their transportation requirements, if and when a new sales agreement is

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concluded by EascoGas with Sonatrach. At a meeting on May 15, 1975, the EascoGas representatives did not dispute that a new T.A. would be necessary. They stated at that time that they expected to conclude a new sales agreement with Sonatrach in June 1975 and would be in touch with us then. Obviously, any new T.A. we negotiate should include "ship or pay" provisions that fully cover the estimated capitalized costs of the vessels. These costs were not fully covered under the old agreement.

D. THE ENERGY COMPANIES

1. HOW THEY CAME INTO THE DEAL

The way that the Energy companies entered the Burmah LNG deal on the surface at least is suspicious. Other companies, particularly United Tankers Corporation, offered Burmah what would seem to be much more attractive proposals (See United Tankers proposal, dated , 1972). United Tankers it should be noted is an American company of some substance and it would have been willing to invest monies on its own. Mr. Kulukundis chose to reject to United Tankers and other proposals in preference for doing business with his long time business associate Dr. C. Y. Chen.

At the meeting between the Burmah Tankers representatives and the Energy principals, Messrs. Chen, Cuneo and Shelby on May 12th, Dr. Chen explained that he agreed to establish the Energy Company and its subsidiaries only after being assured what he described as a "cost plus contract". Considerations other than prudent business judgement and the best interests of Burmah appear to have prompted Mr. Kulukundis to opt for the Chen deal. First of all, Chen had no on-going company to perform these functions. He did not even leave his position as Chairman of Marine Transport Lines until February 1975. Secondly, as we have stated, the deal demanded by Dr. Chen was not

nearly as attractive as that offered by others, particularly United Tankers. It should be noted in passing that Mr. Kulukundis has pushed or tried to push Dr. Chen into other deals involving Burmah and the suspicion exists that Mr. Kulukundis and Dr. Chen were continuing business partners during the entire period of Mr. Kulukundis' employment with Burmah.

2. RELATIONSHIP BETWEEN ENERGY COMPANIES AND MR. KULUKUNDIS

The Energy people now admit to an association with Mr. Kulukundis in a private LNG venture of their own perhaps other ventures. They have in fact, in negotiations with Pacific Lighting Corp., described Mr. Kulukundis' long-time company, Mutual Shipping, as being a subsidiary of Energy. The suspicion arises that during the period of Mr. Kulukundis' employment with Burmah, there were not only private deals between Chen and Kulukundis, involving possible kickbacks to both, but that there was also an understanding concerning Kulukundis' participation in the Energy companies.

3. CONFLICT WITH THE INTERESTS OF BURMAH

Apart from the possible illegal kickback of commissions, the pursuance of an independent LNG deal by the Energy people could be very detrimental to Burmah's interests. Burmah having committed a substantial investment to this deal and having undertaken extremely large guarantees, and having paid all of the costs, expenses and fees of the Energy companies, is as a matter of equity, entitled to have the option at least of benefitting from other LNG deals that might arise from this situation.

The Energy people have undertaken to take advantage of these deals themselves. They have, inter alia

(a) obtained an option on an additional 10 LNG vessels from General

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Dynamics,

(b) been dealing with Pertamina on their own,

(c) been dealing with Pacific Lighting, who they met in the context of the Burmah deal, on their own,

(d) been dealing with New York financial institutions in an effort to obtain financing for their own deal, and

(e) been dealing with A. L. Burbank, Burmah's broker on the Easco deal, with respect to their own venture.

4. THE ENERGY PEOPLE STAND IN THE WAY OF ALTERNATIVE ARRANGEMENTS THAT BURMAH MIGHT MAKE.

There are several alternative approaches for structuring the financing of the Cherokee vessels in which the Energy companies might not have any legitimate role. It is for this reason that it would be improvident and unfair to Burmah to permit the Energy people to obtain a commitment from Burmah that they would have an indispensable function as the bareboat charterers of the Cherokee vessels irrespective of whatever financing arrangement might develop. For example, it might be the case even if the vessels were to be financed under Title XI of the Merchants Marine Act, that a substantial American company might be willing to participate with Burmah on the venture on some basis. If such a situation were to develop, Energy would obviously be a supernumerary and would have no legitimate function in the deal. Dr. Chen seeks to avoid such an exclusion by extracting Burmah's commitment as a condition for his applying for the security interest to Burmah so that he can force himself into a situation whereunder Burmah would have to buy him out if it was able to make such an alternative arrangement.

Another possible alternative arrangement, of course, would be the

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construction of the vessels for non-American flag registry or the financing of the vessels without Title XI Mortgage Insurance, in either of which cases a United States bareboat chartering company would not be necessary.

5. DIFFICULTIES OF RESTRUCTURING

The difficulties of restructuring the Energy companies out of the Cherokee deal have been spelled out above under the Control issue. Until there is either (a) an Owner-Lessor designated under a leverage leasing deal, or (b) an acceptable trustee approved by MarAd who can hold the Ship Construction Contracts, there is no way that Burmah can force the Cherokee companies out of their contractual arrangement with General Dynamics. There is no question that Dr. Chen fully realizes the leverage that he has and certainly, Mr. Shelby does without any question. At the meeting between Burmah representatives and Messrs. Chen, Cuneo and Shelby on May 12th, Dr. Chen stated "if you want me out, you can buy me out". It should be recognized in this respect, as we have discussed above, that MarAd, which hopes to avoid any confrontation between Energy and Burmah on the control issue, privately has stated that it would hope that Burmah does buy out the Energy people if they desire to get rid of them. As a legal matter, the buying out of the Chen interests raises a control issue which is just as serious as forcing the Cherokee companies out of the deal in any other manner.

6. THE IMPROVIDENCE OF MAKING A SETTLEMENT WITH THE ENERGY COMPANIES AT THIS TIME

Recognizing that Burmah has no legal right to force the Energy companies out of either their function in the Easco vessels or in the Cherokee vessels, other steps have been taken up to now in an attempt to assert Burmah's equitable position. Even though Energy companies have a certain nominal legal position in the operation

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of the Easco vessels and as holders of the ship construction contract of the Cherokee vessels, the legitimacy of their position with respect to the Cherokee vessel construction, depends in large part on their relationship with General Dynamics. General Dynamics, we believe, could recognize the equitable position of Burmah in this situation and could have refused to do business privately with the Energy people without violating any legal obligation to them. There appears on the surface to be a rather unusual relationship between Mr. Kulukundis and Mr. Veliotis, which permeates and which perhaps controls the relationship between General Dynamics and the Energy companies. This situation has developed in the Energy companies having considerably more stature with General Dynamics than Burmah has with General Dynamics.

At the present time, we do not know all of the facts concerning these relationships, particularly the relationship between Kulukundis and Dr. Chen, during the period of Mr. Kulukundis' tenure of employment with Burmah. It would, therefore, seem to be most improvident to make a settlement or a deal with the Energy companies at this time, unless some specific commitments were to be made by the Energy people as consideration for such deal. In other words, if Burmah were to agree with the continuing position of the Energy companies under the operation of the Easco vessels, as well as the Cherokee vessels, the Energy companies (including all of their subsidiaries) should agree in our opinion to at least the following:

(a) that they not pursue any independent LNG venture on their own without Burmah's prior written approval,

(b) that they would not contact any of the parties involved in the Burmah - LNG deal including Pertamina, G.D., prospective financial lending institutions and the Japanese users of LNG on any independent venture of their

own without Burmah's prior written approval.

(c) that they would apply to MarAd for a transfer of a security interest of the Cherokee vessels of a MarAd approved trustee to be held for Burmah, such an interest to be equal to Burmah's advancement of construction payments to Cherokee for G.D., and

(d) that they would agree to the assignment of the Cherokee Ship construction contracts to a MarAd approved trustee.

E. THE PERTAMINA TRANSPORTATION AGREEMENT

1. NO OBLIGATION TO PERTAMINA

This agreement concluded September 23, 1973 requires 7 vessels with an option, as yet unexercised by Pertamina for an eighth vessel. The first vessel is required in March 1977. Five of the required vessels are now under construction at GD. It should be noted at the outset that the obligation to furnish transportation to Pertamina is subject to the condition that "Burmast shall be able to arrange suitable financing on terms and conditions suitable to Burmast and the granting of Mortgage Insurance Guarantee (Title XI by the U.S. Government (Maritime Administration)). The second of these conditions has been met by virtue of the MarAd Title XI commitment letters. However, the first has not been met inasmuch as the original owner-lessor banks withdrew their commitments in January 1975. Tankers has taken the position with Pertamina in oral discussions with its counsel Mr. Utomo that while it is attempting to meet the intent of the Transportation Agreement, it is under no legal obligation to do so due to the lack of suitable financing. Mr. Utomo orally agreed that Burmah's position is valid. Therefore, in the "worst case" of the entire Pertamina transaction collapsing, we do not believe that Burmah would have any liability to Pertamina.

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2. THE DIVISION OF BURMAST PROFITS

The attractiveness of the entire Pertamina Transportation Agreement to Burmah is substantially lessened by the give-aways of the Burmast profits. The transportation agreement (Burmast) profits are presently distributed as follows:

5% Far East Oil Trading Co. (sales agency for Pertamina)

10% Overseas Natural Gas (reportedly owned solely, in presently determined shares, by Stephen Spence Davids and Elias Kulukundis as custodian for Yannis Kulukundis under uniform gifts to Minors Act)

20% Option, as yet unexercised, to Edna S.Z., Hong Kong (reportedly a front for Indonesian interests)

65% Burmah Oil Tankers

The 65% share for Burmah is illusory because it is required to bear the entire U.S. and U.K. tax burdens. This reduces Burmah's after-tax share to approximately 45% of the profits.

3. RELATIONSHIP WITH GENERAL DYNAMICS

The events of the past month seem to indicate that General Dynamics is working in concert with Energy/Cherokee and against Burmah. Demands by General Dynamics for exorbitant contract price increases on minor changes have not been resisted by Energy. Recently, Energy has also delayed in passing on to General Dynamics an instruction by Burmah as time charterer of the Easco vessels regarding a possible General Dynamics "acceleration" cost claim. The acceleration cost claim, if allowed to stand, would result in a total bail-out for all of General Dynamics overruns. Energy's delay in transmitting our instructions jeopardizes the defense against this claim. Finally, Energy has not

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resisted General Dynamics exorbitant claims for progress payments which have included claims for advance payments, not authorized by the contract. We have almost no control over the performance by General Dynamics but are nevertheless expected to fund every cost incurred and must pay from our own pocket without recovery under the T.A., the increase in financing costs resulting from delay in delivery of the vessels.

Following the May 1975 loan from Burmah to the Cherokee companies in amounts less than those claimed by GD, GD is still claiming default in payment. This claim should be ignored. The difference between what we recognize as earned progress to April 30, 1975 and GD's claim are amounts resulting from overbilling progress on the aluminum spheres and advance progress payments for May which in our opinion are not billable under the contract until May 31, 1975.

ITEM 2 OF SCHEDULE A TO COMPLAINT - MEMORANDUM DATED
MAY 12, 1975 FROM RICHARD W. KURRUS TO JOHN J. McMULLEN

MEMORANDUM

To: Dr. John J. McMullen

May 12, 1975

From: Richard W. Kurrus

Subject: Meeting on Thursday Morning, May 8, 1975, with Robert J. Blackwell, Maritime Administrator, Assistant Secretary of Commerce for Maritime Affairs, and Samuel Nemirow, Assistant General Counsel, Maritime Administration, and Stanley J. Wilson, General Manager, Burnah Oil Ltd., and Richard W. Kurrus.

Although this meeting had been provoked by Mr. Blackwell's letter of May 1st to Mr. J. J. Cuneo, a copy of which was sent to Burnah, the letter was not specifically discussed. Neither Mr. Blackwell nor Mr. Nemirow, who wrote the letter, raised that subject. At the outset of the meeting Mr. Wilson explained that Burnah fully intended to complete the construction of at least the 8 LNG vessels, the construction and financing of which it has agreed to guarantee. Mr. Wilson stated the following points:

1. Burnah is a viable enterprise that is capable of carrying through with this project and meeting its commitments;
2. Burnah is seriously concerned with the way that the overall transaction has been structured with many apparently improvident side deals having been entered into which it is doubtful that any project could carry - no matter how profitable it might be;
3. This overall review of the project has led Burnah to question the participation and function, inter alia, of the Energy companies and their subsidiaries;
4. Dr. John McMullen has been placed in charge of this review and Burnah has invested him with the authority to take such actions as may be in the best interests of Burnah; and
5. Even though a problem appears to have developed with the Energy people, Burnah does not wish to abandon the Title XI commitment from Marad and it feels that there is probably no other method of financing that is realistically available for the project.

Mr. Blackwell stated that he appreciated Mr. Wilson's visit and his comments. He observed that the Title XI insurance program has been under some criticism on the foreign control issue and that he hoped the controversy between Burnah and Energy could be settled privately. He wanted to know whether we had met with the Energy people and we stated that they had not responded to Mr. Down's telex to Mr. Cuneo suggesting that they meet with Dr. McMullen. Mr. Blackwell stated that he would be happy to call Mr. Cuneo and urge him to arrange for such a meeting promptly. He also stated that he would call a meeting of the parties

in his office but that he felt there should first be an effort by Burmah and Energy to settle their differences privately. Mr. Wilson assured Mr. Blackwell that such an effort would be made.

I met with Mr. Blackwell for lunch on the same day. We had a further discussion of the Burmah-Energy problem. I explained to Mr. Blackwell that we could understand the function of the Energy companies under the Title XI insurance financing, but that the role of the Energy companies beyond that was impossible for us to understand or justify. Mr. Shelby, as I understand it, came into this deal as a lawyer representing Burmah. He and Messrs. Chen and Cuneo have put together the Energy companies and their subsidiaries in order to meet the legal requirements of United States ownership and control of (a) the company having the bareboat charter from the owner-lessor, under the leverage lease arrangement and (b) the company holding temporarily the shipbuilding contracts until permanent financing on the Cherokee I-V vessels can be arranged.

People having the substantial interest in a project which Messrs. Shelby, Chen and Cuneo claim usually provide something of substance. Either they have been finders, they have invented something or devised the project, put together the financing under difficult circumstances or brought the indispensable parties to the deal together. Messrs. Shelby, Chen and Cuneo appear to have done none of these things. They rather appear to us to be capitalizing on their special position under the Title XI financing and taking this further to create a vested equity interest in the deal that cannot be justified. I explained to Blackwell that we could not at this time understand the consideration for any commitment to Messrs. Shelby, Chen and Cuneo beyond the Title XI financing arrangements and that the primary purpose of a meeting with them would be to afford them an opportunity to explain what consideration, if any, on their part did exist.

I also explained that we had some serious problems concerning actions that Messrs. Shelby, Cuneo and Chen were taking that appeared to be in conflict with Burmah's interest. In this respect, I pointed out that they seem to have a continuing business association with Mr. Elias Kulukundis. Furthermore, Messrs. Shelby, Cuneo and Chen are now pursuing, according to our information, their own private LNG project or projects which involve General Dynamics, Pertamina and possibly other companies who are integral and essential parts of the Burmah project. I emphasized that we do not have all of the facts but that if the Energy people are acting in the ways that we have heard, they would be in our opinion violating legal obligations which they owe to Burmah and would be acting improperly and illegally by interfering with Burmah's business relationships to which they have been introduced while they were ostensibly acting on Burmah's behalf.

I also pointed out that this was not a situation where the Energy people had supplied any significant capital investment on their own. All expenses, costs and fees have been paid by Burmah. Under these circumstances, Burmah we feel has a legal right to prevent the Energy people from assuming any larger or different role than their involvement as a conduit in the Title XI financing arrangement contemplated.

Mr. Blackwell stated that he could appreciate this problem but that it was obviously not Marad's problem. He said that he felt that Mr. Kulukundis may have acted imprudently and perhaps even improperly in the deals he set up, but that Burmah had permitted him to operate, had given him a cover of authority and had perhaps even countenanced the deals.

I explained that the real problem vis a vis the Energy people arose because of the special legal problems concerning the Title XI financing and that everyone recognized that the structure that Marad had approved in this deal (and in other similar deals such as Maritime Fruit Carriers, Ultramar, Shell, A. J. Chindris etc.) was based on a fiction. He said that he recognized the weakness in the theory as to how these deals were established and that this is what worried him about a full fledged legal controversy between Burmah and Energy.

I explained that we obviously were not interested in provoking such a legal battle if it could reasonably be avoided, but the way that this deal is presently structured is an unviable and impossible situation for Burmah. If we cave in to the Energy people, we would in a real way be submitting to blackmail. Furthermore, there is a valid argument I believe that the Energy people would be permitted to profit unduly and unconscionably through a United States Government contract.

Mr. Blackwell admitted that there appears to be several things basically wrong with the overall structure of this deal that should be rectified if possible. He agreed that Burmah must take its own actions to place this deal on a sound legal as well as economically feasible basis. I asked him to bear with us in attempting to work out these problems and stated that we would keep him informed of developments.

ITEM 3 OF SCHEDULE A TO COMPLAINT - CONFIDENTIAL
MEMORANDUM DATED AUGUST 21, 1975 FROM RICHARD W.
KURRUS TO JOHN J. McMULLEN

CONFIDENTIAL MEMORANDUM

TO: John J. McMullen
FROM: Richard W. Kurrus

August 21, 1975

I had a discussion today on the telephone with Mr. John C. Bullitt, a partner of the New York law firm of Shearman & Sterling. Mr. Bullitt had signed, as President each of the Cherokee I-IV Shipping Corporations, applications for Title XI construction loan and mortgage guarantees that were filed with MarAd on August 8, 1973.. Mr. Bullitt was listed as the owner of all of the outstanding stock (500 shares) of each company. He signed the affidavit of United States corporate citizenship. The other officers and directors of each of the applicants were also members of the law firm of Shearman & Sterling who were at that time acting as counsel for Burmah Oil Tankers Limited (BOTL).

I asked Mr. Bullitt why he had formed the Cherokee I-IV Shipping Companies, with himself as President and sole stockholder and why he had filed the Title XI applications with MarAd and signed the affidavits of corporate United States citizenship. He said that his law firm at that time represented BOTL and that he had accordingly taken each of these actions at the request of and as an accomodation to BOTL. He further explained that "at the request of BOTL" meant "at the request of Elias Kulukundis".

In response to my questions, Mr. Bullitt stated that he had no independent interest in any of the Cherokee companies and that he understood and BOTL understood that he was holding the stock in each of the companies for the benefit of Burmah. I asked

him whether he recalled any understanding that may have existed between Mr. Kulukundis and Dr. C. Y. Chen at the ^{time that the} original Title XI applications of the Cherokee I-IV Companies were filed on August 8, 1973. He said that his recollection of some of the events and understandings was at this time vague but that I should first of all understand that Mr. Kulukundis and Dr. Chen "were very very good friends." The implication that I received from this was that this friendship permeated the oral understanding between Mr. Kulukundis and Dr. Chen and that the arrangements entered into between them may have been on a basis other than sound business practice and that certainly any such understandings did not reflect any "arms' length bargaining" between them. He said that there was an understanding that Dr. Chen would form United States companies that would act as the bareboat charterers of the Cherokee vessels and that the financing and structure of the Pertamina/Cherokee venture would be "a carbon copy of the Easco deal".

I asked him why he had not mentioned the role of the Energy Transportation Corporation in the original applications and he stated that he could not recall specifically why he did not but that he thought he had been instructed to leave them out by Mr. Kulukundis.

He said that everyone involved in the Cherokee applications, including especially Messrs. Kulukundis and Chen, assumed that construction loan and leverage lease mortgage financing identical to that in the Easco deal would be put in place. There was no discussion of any alternative financing and, therefore, no thought or consideration was given to any role that Dr. Chen's

companies or the Energy Transportation Corporation would have under any alternative financing plan.

Mr. Bullitt explained that the financing plan involved the establishment of owner trusts which would be the United States citizen owner-lessors of the vessels. He also explained that the owner participants in these trusts were three separate dry trusts established by the "lending banks" which would have no recourse against the banks. These dry trusts were to borrow the equity money involved for the construction and mortgage financing strictly on the basis of the guarantees of Burmah Oil Company Limited. In other words, these "lending banks" would have no equity investment or risk in the deal - everything would be guaranteed by Burmah. This is precisely the way that the deal was structured with the Easco vessels.

Mr. Bullitt stated that it was intended that the Cherokee construction contracts with General Dynamics and the rights under the MarAd applications would be transferred to the respective owner-lessors as soon as the financing had been put in place. It was contemplated that the owner-lessors would arrange for the construction financing on the basis of Burmah's guarantees, and that they could obtain the advantage of the tax deductions for interest on the construction loans. Again this was patterned after the Easco deal.

Mr. Bullit explained that when Shearman & Sterling withdrew as counsel for Burmah in October 1973, he asked Mr. Kulukundis what he should do with the stock of the Cherokee I-IV Companies. He was told by Mr. Kulukundis to transfer the stock

to Mr. Eli Ellis, a partner in the law firm of Hill, Betts and Nash, which he did.

As we have discussed since I became involved in this matter, the problem of "the control" of the United States citizen corporations holding the Cherokee construction contracts and owning the Easco vessels was an extremely serious one. On the surface, there seemed to be a violation of the holdings laid down in the leading case of Meacham Corp. v. United States, 207 F. 2d 535(1953), which could create a cloud on the title to the vessels and subject them to possible forfeiture to the United States because of the violation of sections 2 and 9 of the Shipping Act, 1916, as amended.

The facts as set forth by Mr. Bullitt create a situation which is much more serious than we had supposed. It seems obvious that there was a misstatement of fact when Mr. Bullitt certified under oath the United States citizenship of the Cherokee I-IV Shipping Companies. Mr. Bullitt stated to me that Burmah had control of these companies, that he took his orders from BOTL and that he held the stock for the benefit of and as an accomodation to BOTL.

As I understand it, the Title XI and construction-differential subsidy applications filed for the three Easco vessels, although filed by a different law firm, followed the same procedure. Even if they did not, the measure of Burmah's control in the Easco deal is overwhelming in the context of the holdings in the Meacham case. No one as far as I can determine has any investment in either the Easco or the Cherokee vessels except Burmah. All of the equity

investment in the Easco vessels was borrowed on the basis of Burmah's guarantees with the participating banks having no exposure because the money was borrowed by dry trusts which have no recourse against the banks. The only recourse is against Burmah.

There is no question in my mind that both the Easco and Cherokee deals are in violation of the law. It should be borne in mind, as the holding of the Court in the Meacham Case makes clear that once there has been a violation of the U. S. citizenship requirements of section 2 of the Shipping Act, that violation cannot be subsequently cured by the transfer of the vessel or the interest involved to a bona fide United States citizen corporation.

We can get no real help in this situation from any MarAd approvals. The courts have held that MarAd is not empowered to authorize a violation of the Shipping Act. Furthermore, I am sure that MarAd would deny knowledge of some of the critical facts which relate to this control issue.

This situation is exceedingly serious. It may foreclose us from taking legal action against the Energy Transportation Corporation and Messrs. Chen, Cuneo and Shelby because of the facts that would inevitably be disclosed in such litigation. I have some ideas which I believe we should take to protect Burmah's interests which I would like to discuss with you.

ITEM 4 OF SCHEDULE A TO COMPLAINT - MEMORANDUM OF LAW
FOR BURMAH OIL TANKERS LIMITED DATED SEPTEMBER 16, 1975

MEMORANDUM OF LAW
FOR
BURMAH OIL TANKERS LIMITED

LEGAL STATUS OF THE PRESENT OWNERSHIP AND
FINANCING OF THE PERTAMINA
LNG VESSELS

Kurrrus and Jacobi
von Baur, Coburn, Simmons & Turtle
Washington, D. C.

September 16, 1975

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I. SUMMARY

The purpose of this memorandum is to examine the legal problems under the Shipping Act, 1916, as amended, and under the Merchant Marine Act, 1936, as amended, relating to the construction, financing, ownership and operation of the five LNG carriers for which the Cherokee I-V Shipping Corporations have entered into construction contracts with General Dynamics and concerning which the Cherokee companies have applied for and received preliminary commitments for Title XI construction loan and mortgage guarantees from the Maritime Administration. These problems arise from the following facts:

- A. The fact that the Cherokee companies were created and formed at the direction of the former President of Burmah Oil Tankers Ltd. ("BOTL"), Mr. Elias J. Kulukundis;
- B. The fact that all of the stock of the Cherokee I-IV companies was held by attorneys for Burmah with the clear understanding that they were subject to Burmah's direction and control and that they would transfer such stock to Burmah's designee when instructed to do so;

- C. The fact that the affidavits of corporate citizenship of the Cherokee I-IV companies filed with the Title XI applications of those companies to MarAd were fraudulent;
- D. The fact that all of the costs connected with the Cherokee companies, all Title XI filing fee, all legal expenses and other costs, and all of the construction progress payments to General Dynamics have been borne by Burmah;
- E. The fact that the stock of the Cherokee I-IV companies was transferred twice to Burmah designees at the direction of Mr. Kulukundis, the first designee being another Burmah attorney and the second designee being Energy Transportation Corporation ("Energy"), the controlling interest in which is held by Mr. C. Y. Chen, a long time business associate of Mr. Kulukundis;
- F. The fact that the nominal owners of the Cherokee companies have made no real or tangible investment in this project or provided any other meaningful consideration;
- G. The fact that the Cherokee companies displayed no independence until after Mr. Kulukundis was deposed as President of BOTL;

- H. The fact that there is no written agreement between Energy on the one hand and Burmah describing the role of the Cherokee companies in the vessel construction and financing which gives rise to the inference that the Cherokee companies continued to be under Mr. Kulukundis' control;
- I. The fact that the negative covenants in the promissory notes from the Cherokee companies to Burmah in themselves give Burmah the power to control the Cherokee companies.

The above facts support the following legal conclusions:

- A. That the Cherokee companies are not citizens of the United States within the meaning of Section 2 of the Shipping Act;
- B. That it was the clear intention of the parties that the Cherokee companies entered into the ship construction contracts with General Dynamics with the understanding that they would be transferred to another party as soon as Burmah had arranged the financing for the vessels;

- C. That with the original financing plan having been frustrated, the Cherokee companies hold these contracts as constructive trustees for Burmah;
- D. That because the Cherokee companies were not citizens of the United States within the meaning of Section 2 of the Shipping Act when the applications for Title XI construction loan and mortgage guarantees were filed with MarAd or when the ship construction contracts were entered into with General Dynamics, and because they are not presently citizens of the United States, the continued involvement of those companies in the ship construction contracts will create a cloud on the title to the vessels and could subject them to forfeiture to the United States;
- E. That since the Cherokee companies are not citizens of the United States, within the meaning of the Shipping Act, they do not qualify for Title XI construction loan and mortgage guarantees and the requisite construction notes and mortgage bonds cannot be issued through those companies.

The mere recital of these facts and a specification of the attendant legal problems gives rise to the conclusion that the construction and financing of the five Pertamina vessels must be placed on a proper basis if the real danger of eventual forfeiture of the vessels is to be avoided. Without any question, this must involve either transferring the ship construction contracts to a bona fide United States citizen who would have a legitimate business purpose in the venture and who would be free from Burmah's control, or transferring those contracts directly to Burmah. In the latter circumstance, Burmah would have the option of constructing the vessels for non-United States flag registry, or at some later time transferring the contracts to a bona fide United States citizen corporation which could reapply for Title XI construction loan and mortgage guarantees. Under any circumstances, there must be a full disclosure of the essential facts relating to this matter both to MarAd and the United States Department of Justice before any further commitments are made by Burmah, and appropriate rulings must be obtained from those agencies.

II. STATEMENT OF FACTS

A. Burmah's First LNG Venture: the Easco Transportation Agreement.

The Burmah Oil Company Limited (BOCL) is an international oil company, incorporated under the laws of Scotland. It is engaged in various aspects of the petroleum industry including searching for, producing and transporting crude oil and natural gas, and manufacturing and marketing petroleum products. The majority of BOCL's stock is owned by, and the corporation is controlled by, citizens of the United Kingdom. Burmah Oil Tankers Limited (BOTL) is a wholly owned subsidiary of BOCL, incorporated in Bermuda, and having its principal offices in New York City. BOCL and BOTL are hereinafter referred to collectively as "Burmah."

At sometime in 1972 Burmah decided to enter into the business of ocean transportation of liquified natural gas (LNG). LNG is natural gas converted by pressure and cooling to a liquid state at a temperature of -259°F . As a liquid, it occupies approximately 1/600th of its volume as a gas and can be economically shipped over long distances in specially designed vessels.

On June 26, 1972, Burmah concluded its first agreement for the transportation of LNG. This agreement was with a joint venture of the Public Service Electric and Gas Company of New Jersey and the Algonquin Gas Transmission Company (hereinafter referred to as "Easco"). The Easco Transportation Agreement required Burmah to furnish from three to five LNG vessels to transport LNG from Algeria to the east-coast of the United States for a twenty-two year period.

At the time it entered into the Easco Agreement, Burmah determined that the most economical way to construct and finance the required vessels was to build them in a United States shipyard with U. S. Government construction differential subsidies ("CDS") and U. S. Government guaranteed financing ("Title XI financing") available under the Merchant Marine Act, 1936.

B. Organization of the Cryogenic Companies.

In order to meet the statutory requirement that ships whose construction is aided by CDS and Title XI financing be owned by citizens of the United States, Burmah on July 12, 1972 caused Cryogenic Energy Transport, Inc.,

LNG Transport Inc., and Liquegas Transport Inc. (the "Cryogenic companies") to be organized in the United States. The entire capital stock of these companies was initially held by James Durbin, a United States citizen who at the time was also Chairman of BOTL and a director of other Burmah subsidiaries. The Cryogenic companies were formed for the express purpose of (1) making application to the U. S. Government through the Maritime Administration ("MarAd") for CDS and Title XI guarantees to aid in construction of the Easco vessels and (2) entering into construction contracts with General Dynamics.

On July 14, 1972 the CDS applications were filed. On August 31, 1972 the Title XI applications were filed. Affidavits of United States citizenship were filed by the officers of the Cryogenic companies. Subsequently, the entire stock of the Cryogenic Companies was transferred by Mr. Durbin to the Wilmington Trust Co., Wilmington, Delaware. On September 28, 1972, the three Cryogenic companies each entered into a contract with General Dynamics Corporation, Quincy Shipbuilding Division ("General Dynamics") for the construction of one 125,000 cubic meter capacity LNG carrier for a total contract price, including subsidy, of \$89,575,000 each.

C. The Financing Plan for the Easco Vessels.

The Title XI applications for the Easco vessels set forth what is known as a leverage lease financing. Under this plan the construction contracts were to be assigned by the Cryogenic companies to a United States citizen Owner-Trustee who would hold legal title to the contracts during construction, and to the vessels on delivery, for the benefit of three institutional investors, called the Owner- or Equity-Participants. The Owner-Trustee would borrow funds sufficient to construct the vessels and pay all interest and other costs related to construction of the ships on the basis of short term notes due on delivery of the vessels. These notes to the extent of 75% of the statutorily defined "actual cost" of construction would be guaranteed by the United States pursuant to Title XI of the Merchant Marine Act 1936.¹ The balance

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1. When construction differential subsidies are involved, the United States will guarantee under Title XI of the Merchant Marine Act, 1936, construction loans and a mortgage amounting to 75 percent of the statutorily defined "actual cost" of the vessel to the owner (viz, not including the CDS element). Where no DCS is involved, Title XI guarantees can extend to 87.5% of the "actual cost" to the owner.

of the notes required to complete construction of the ships would be guaranteed by Burmah. At delivery of the ships, the Owner-Lessor would retire the short term construction notes with (1) the proceeds of the sale of long term ship mortgage bonds, guaranteed by the United States under Title XI, for 75% of the statutorily defined "actual cost" at delivery, and (2) the equity contributions of the three Owner-Participants for the balance of the short term notes. Since the Owner-Trustee had no ship operating capability, the vessels at delivery were to be leased on a long term "bareboat" charter to a United States citizen operating company which would in turn sub-lease the vessels to subsidiaries of Burmah on long term time charter. The time charter payments by Burmah were to be fixed at a rate sufficient to cover (1) all costs and expenses plus profit of the operating company, (2) payment of principal and interest on the Title XI guaranteed ship mortgage bonds and (3) an amount to provide a return on, and recovery of, the Owner-Participants' investment.

On August 9, 1974, documents establishing the legal commitments of all parties to the foregoing plan were executed and the construction contracts were assigned by the Cryogenic companies to the Wilmington Trust as Owner-Trustee for three Owner-Participants. At delivery of the vessels the Owner-Participants are committed to invest approximately \$30 million per ship to cover that portion of the construction loan not covered by the Title XI guaranteed bonds. The Owner-Participants are single purpose non-recourse leasing company subsidiaries of major United States corporations -- First National City Bank, New York, First National Bank of Chicago, and the General American Transportation Company. These corporations have guaranteed their subsidiaries' equity commitments. Thus, the beneficial owners of the contracts during construction, and of the vessels at delivery, are bona fide U. S. citizens. They are committed to provide the equity in the vessels, amounting to approximately 30% of their capitalized cost, and will receive a substantial return on their investment from the overall venture.¹

1. The commitments of the Owner-Participants in the Easco vessels are subject to more than 30 conditions precedent. There is a substantial question as to the legality of the Easco arrangement under the shipping laws of the United States, if any of these conditions should fail to be fulfilled and if the Owner-Participants should withdraw. This would leave the Easco vessels in a situation similar to that of the Pertamina vessels discussed below.

D. Burmah's Second LNG Venture: The Pertamina Transportation Agreement.

On September 23, 1973, Burmah, acting through Burmast East Shipping Corp. ("Burmast") a majority owned subsidiary of BOTL, entered into a Transportation Agreement with Perusahaan Perlangganan Minyak Dan Gas Bumi Negara ("Pertamina") the Indonesian national oil and gas company. Pursuant to this agreement Burmast was to provide up to eight LNG vessels for a period of twenty years for the transportation of LNG from Indonesia to Japan. Burmah intended to finance the construction of these vessels in substantially the same manner as the Easco vessels except only that CDS would not be available because the vessels would be engaged in foreign-to-foreign trade.

E. Organization of the Cherokee Companies.

In August 1973 in anticipation of conclusion of the Pertamina Agreement, Burmah requested its New York law firm (Shearman and Sterling) to organize four companies (a fifth company was added later) named Cherokee I Shipping Corp., Cherokee II Shipping Corp., etc. (The "Cherokee companies"). All of the stock of these companies was initially held by

Mr. John Bullitt, a partner in Shearman and Sterling.¹ The Cherokee companies were intended to perform the same transitory function in the Pertamina venture as the Cryogenic companies had performed in the Easco venture. The Cherokee I through IV companies accordingly filed applications with MarAd on August 7, 1973 for commitment of Title XI guarantees for financing the first four vessels for the Pertamina project.

At sometime prior to October 1, 1973, Mr. Bullitt's firm withdrew as legal counsel to Burmah. At the request of Burmah, Mr. Bullitt transferred the stock of the Cherokee companies to another Burmah lawyer, Mr. Eli Ellis. Mr. Ellis, in turn, and at the request of Burmah, transferred the stock to the Energy Transportation Corporation ("Energy"). Energy is owned 80% by Mr. C. Y. Chen and his family. Mr. Chen is a long time business associate and sometime partner of Mr. Elias Kulukundis, then President of BOTL. Energy was organized by Mr. Chen in agreement with Mr. Kulukundis to act as

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1. Mr. Bullitt has stated that he had no individual interest in the transaction, that he held the stock as an accommodation to Burmah and that he always understood the stock would be disposed of in accordance with instructions of Mr. Kulukundis.

the holding company for the U. S. citizen operating companies that are scheduled to bareboat charter the Easco vessels from the Owner-Trustee at delivery. All costs and expenses of the Cherokee companies and Energy, including officer's salaries, legal fees, etc., have been borne by Burmah either directly or indirectly as charges to the capitalized costs of the vessels for which Burmah ultimately pays in the time charter payments.

On October 1, 1975 construction contracts for the first four Pertamina vessels were entered into by the Cherokee I-IV companies with General Dynamics at a fixed price of \$94 million for the Cherokee I-III vessels and \$98 million for the Cherokee IV vessel. Performance by the Cherokee companies was guaranteed to the extent of approximately \$12.5 million per contract by Burmah. On December 31, 1973 the Cherokee V contract was entered into with General Dynamics at a fixed price of \$96.3 million. Under Article XXIV of these contracts, title to the vessels constructed thereunder is held by the Builder, General Dynamics, until delivery at which time it passes to the Purchaser (i.e., the Cherokee companies or their assigns):

F. The Original Pertamina Financing Plan.

The financing arrangements originally contemplated for the Pertamina vessels were to parallel those completed for the Easco vessels. Construction contracts and Title XI applications were to be assigned by the Cherokee Companies to an Owner-Trustee for three institutional investors who would supply the equity portion of the capitalized cost of the vessels at delivery. The balance of the capitalized cost would be provided by the sale of Title XI guaranteed bonds issued by the Owner-Trustee. During construction, the ship would be financed by Title XI guaranteed notes issued by the Owner-Trustee and by Burmah guaranteed interim loans. A preliminary commitment by the United States to guarantee obligations under Title XI was received for the first four vessels on November 7, 1973 and for the fifth vessel on May 21, 1974.¹ The November 7, 1973 letter described the contemplated financing plan for the Pertamina vessels and expressly states that both the construction contracts and the Title XI applications were to be assigned by the

1. The November 7, 1973 preliminary commitment letter is reproduced in Appendix 1; the May 21, 1974 letter is substantially the same.

Cherokee companies to the Owner-Trustee as follows:

"With respect to the applications dated August 8, 1973, as amended, of [the Cherokee Companies] to be assigned to four trusts to be established by certain institutional investors (Equity Participants) each of which will be administered by a trust institution as owner trustee (Ship owner) . . .

* * *

Approved the proposed sale and lease financing arrangements, whereby the Cherokee Companies will assign all their rights and obligations under the applications and the Construction Contracts with General Dynamics Corporation... to the Shipowner."

On November 12, 1973 preliminary commitments were received from three institutional investors to provide the equity portion of the ship financing. Pending completion of the financing arrangements, a temporary interim construction loan was obtained on the basis of Burmah guarantees to enable the Cherokee companies to meet their progress payment obligations on the construction contracts with General Dynamics.

G. Collapse of the Original Pertamina Financing Plan; the Direct Burmah Loans.

The original financing plan for the Pertamina vessels collapsed before the final commitments of either

MarAd or the intended institutional investor Owner-Participants could be obtained. In 1974 there was a change in financial market conditions which made the investment less attractive for the Owner-Participants. In addition, severe losses by Burmah in its tanker operations in that year led the investors to question Burmah's ability to guarantee the time charter payments. Accordingly, in January 1975, the intended Owner-Participants withdrew their preliminary commitments. At the same time, the construction lenders refused further loans for progress payments and called the notes on the temporary interim loan.

In order to meet its guarantee obligation on the temporary interim loan and to prevent a default on the construction contracts, Burmah has since January 1975 loaned more than \$60 million to the Cherokee Companies to repay

the temporary interim loan and to pay the monthly progress payment invoices of General Dynamics and other expenses related to construction of the vessels. These loans have been made in exchange for unsecured promisory notes of the Cherokee companies. Under the affirmative covenants of these notes the Cherokee Companies agree to: ¹

1. Provide financial information to Burmah;
2. Pay all taxes, assessments and other Government levies, all lawful claims and trade bills, etc. so that the assets of the companies are not impaired;
3. Maintain books and records and allow Burmah reasonable inspection thereof;
4. Perform all obligations under the construction contracts;
5. Maintain their corporate existence; and,
6. Use the proceeds of the loans only for the construction and financing of the vessels and expenses related thereto.

Under the negative covenants of the notes, the Cherokee companies agree that, until the notes are paid,

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1. The complete text on these notes is reproduced in Appendix 2.

they will not, without the consent of Burmah:

1. Incur any indebtedness other than (i) notes payable to Burmah or (ii) indebtedness guaranteed by the U. S. Government to finance the construction of the ship;
 2. Create or suffer to exist any liens or encumbrances on their assets [subject to limited exceptions not herein relevant];
 3. Give any guarantees with respect to obligations of others;
 4. Make any loans or advances;
 5. Make any investments or allow new contributions to their own capital;
 6. Enter into any consolidation, merger or sale of assets;
 7. Declare dividends or otherwise distribute assets; or
 8. "Enter into any business other than that related to the construction, financing and chartering of the vessels.
- H. Burmah's Demands For Transfer of Legal Title to the Stock and Contracts of the Cherokee Companies to an Independent Trustee.

After the frustration of the original financing plan, Burmah requested the stockholders of Energy to cause the transfer of the legal title to the stock and contracts of the Cherokee companies to an independent trustee who would hold them until a new financing plan could be arranged.

The Energy principals have refused to do this unless and until Burmah agrees that other subsidiaries of Energy will be assured the bareboat charters of the Pertamina vessels no matter what alternative financing is ultimately arranged for those vessels.

Under the original financing plan other subsidiaries of Energy (not the Cherokee Companies) were to receive the bareboat charter of the vessels at delivery and operate them under time charters with Burmah subsidiaries for 25 years at cost plus profit (\$100,000 per year per ship) plus escalation. These bareboat charters were contemplated in the original financing plan because the Owner-Trustee and institutional investor Owner-Participants did not have any ship operating capability.¹ However, with the withdrawal of the original institutional investors and the collapse of the original financing plan there is no longer any need for an independent U. S. operating company in the transaction. While there is no longer any role for the Energy subsidiaries in the transaction, the principals of Energy have attempted

1. And where Burmah as an alien could not operate a ship built with Title XI financing.

to capitalize on their holding of the legal title to the stock and contracts of the Cherokee Companies to force on Burmah a wholly unnecessary role for themselves in any future financing arrangement for the Pertamina vessels. This position of the Energy principals was summarized by Mr. Chen at a May 12, 1975 meeting with the new BOTL President¹ at which he stated "If you want me out, buy me out."

By letter dated August 1, 1975 to Mr. Chen, the principal Energy stockholder, the President of BOTL stated that if Energy would agree to transfer the stock of the Cherokee Companies to an independent Trustee, to be approved by MarAd, which Trustee would hold the stock for the benefit of Burmah until some permanent financing plan could be arranged, Burmah would agree to the participation of the Energy companies in the operation of the Cherokee vessels as the bareboat charterers if financing along the lines of that proposed in the original financing plan could be arranged. The President of Burmah also agreed to consider seriously any financing plan which might be suggested by Energy people similar to that originally proposed in the Title XI applications, but that if so-called leverage lease type financing with institutional investors proved

1. Mr. Kulukundis' employment with BOTL was terminated in January 1975.

not to be available and if Burmah had to bring in other equity partners into the transaction, the Energy companies would continue to participate in the operation of the vessels as the bareboat charterers only if the new Equity Participants were agreeable to such participation. The letter also recites a specific demand that the Defendants transfer the stock of the Cherokee companies to the Chase Manhattan Bank under arrangements which BOTL would undertake to have approved by the Maritime Administrator. Energy and its principals continue to refuse to transfer the legal title to the stock and contracts of the Cherokee Companies unless Burmah agrees unconditionally to their continuing role in the transaction as bareboat charterers of the vessels.

As of July 31, 1975, the keel of the Cherokee I vessel had been laid and the contract work was estimated to be 29.63% complete. Keels had not been laid at this time for any of the other four Cherokee vessels under contract but the contract work completed on each was estimated as follows: Cherokee II, 13.12%, Cherokee III, 1.77%, Cherokee IV, .87%, and Cherokee V, 6.36%.

III. QUESTIONS PRESENTED

1. Is Energy entitled to retain legal title to the stock of the Cherokee Companies against Burmah's demand for transfer to an independent trustee?

2. Are the Cherokee Companies citizens of the United States within the meaning of Section 2 of the Shipping Act, 1916?

3. Are the Cherokee Companies eligible to issue Title XI guaranteed obligations to finance construction of the ships?

4. Does the present financing arrangement whereby Burmah advances all of the funds for construction, subject to the restrictive covenants in the Cherokee notes, violate the Shipping Act?

IV. DISCUSSION

A. Energy Is Not Entitled to Retain Legal Title to the Stock of the Cherokee Companies; Energy Holds the Stock in Constructive Trust for Burmah.

The Cherokee Companies were initially organized at the request of Burmah by Burmah's law firm, Shearman and Sterling, and all of the capital stock was held initially by a member of that firm, Mr. John Bullitt. When Shearman and Sterling withdrew as counsel to Burmah the stock of the Cherokee Companies was transferred by Mr. Bullitt at the direction of Burmah to another Burmah lawyer who at the further request of Burmah transferred it to Energy. Energy was itself organized at the request of Burmah for purposes of providing U. S. citizen operating companies for Burmah's various LNG transportation ventures. The controlling interest in Energy is held by Mr. Chen, a long time business associate and sometime partner of the deposed President of BOTL, Mr. Elias Kulukundis. All costs and expenses of organizing and operating the Cherokee companies as well as Energy have been borne by Burmah directly or indirectly as charges to the capitalized cost of either the Easco or the Pertamina vessels. The only assets of the Cherokee companies, i.e., the construction contracts with General Dynamic

were entered into on the basis of Burmah guarantees, and all progress payments on those contracts have been paid to date by Burmah. Moreover, the original financing plan pursuant to which the Cherokee Companies were organized and obtained legal title to the contracts, clearly contemplated the assignment of the contracts, at Burmah's direction, to a U. S. citizen Owner-Trustee for the benefit of U. S. citizen institutional investors who would contribute the equity for the vessels at delivery. The stockholders of Energy have made no investment in the construction contracts or the Cherokee Companies.

On these facts it is absolutely clear that the stock and assets of the Cherokee companies are subject to a constructive trust for the benefit of Burmah.¹ A

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1. The sole assets of the Cherokee companies are the construction contracts with General Dynamics. Contract rights are "property" on which a constructive trust can be impressed. In Bradford v. Chase National Bank of the City of New York, 24 F. Supp. 28, 34 (S.D.N.Y. 1938) the Court stated "[T]here must be an asset -- whether it be land, a chattel or a chose in action -- in order to have a trust of any kind, express, implied in fact or impressed in law." A contract right is a chose in action. Nadelman v. Insulite Co., 252 App. Div. 300 N.Y. 698, 701 (1937). See also Bogert, Trust & Trustees, §115 (2d Ed. 1965), Accord: 1 Scott on Trust §82 (3d Ed. 1967); Pomeroy, Equity Jurisprudence, §1044 (5th Ed. 1941).

constructive trust arises where a person who holds legal title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it." 5 Scott on Trusts §462 at 3413. See also Bogert, Trusts and Trustees 2d Ed. §471; 80 C.J.S., Trusts §139 at 1015. The classic definition of constructive trust is that of Justice Cardozo in Beatty v. Guggenheim Exploration Co., 225 N.Y. 380, 386; 122 N.E. 378, 380 (1919) as follows: "A constructive trust is the formula through which the conscience of equity finds expression. Where property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee."

There was no wrongdoing on the part of Energy in obtaining the stock of the Cherokee companies. However, neither fraud nor other wrongdoing in the acquisition of the legal title to property is necessary for a constructive trust to arise. O'Connor v. Estevey, 182 Md. 541, 555; 35 A.2d 148, 155 (1943) states that constructive trusts are "...declared to exist where property has been acquired by fraud or some other improper method or where the

circumstances render it inequitable for the party holding the title to retain it." In Dove v. White, 211 Md. 228, 232; 126 A.2d 835, 837 (1956) the Court stated: "This Court has held, as the sole basis for decision, that a constructive trust arises under any circumstances which render it inequitable for the holder of the legal title to retain it." The Court further stated that in O'Connor: "The Court found no fraud or constructive fraud and made no finding or indeed mention of confidential relations, but held that a constructive trust arose because the facts and circumstances showed a situation such as to " * * * render it inequitable for the party holding the title to retain it." Id at 233, 837. See also National Life Insurance Co. v. Bower, 251 F. Supp. 215, 219-220 (D.C. Md., 1966). In Proctor v. Sagamore Big Game Club, 265 F.2d 196, 202 (3rd Cir., 1959) the Court noted that "Pennsylvania has recognized the latitudinous [sic] principle that a constructive trust may arise against one who has been unjustly enriched even though he has been guilty of no act of wrong doing." (Emphasis added). In D'Ippolito v. Castoro, 51 N.J. 584; 242 A.2d 617, 619 (1968) the Court stated: ". . . the better view as expressed in our later decisions is that a constructive trust will be impressed

in any case where not to do so will result in unjust enrichment." And, the Restatement, Restitution (1937) §160 states: "Where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it, a constructive trust arises." The following two cases illustrate specific circumstances where unjust enrichment of the legal title holder has been found.

In Rudenberg v. Clark, 72 F. Supp. 381 (D. Mass., 1947), 74 P.Q. 10, the inventor of the electron microscope transferred to his German employer legal title to the invention so that the employer could obtain for him United States patents on the invention. The inventor followed this procedure in order, among other things, "to be free of the red tape and expense of filing his own patent application." In an action by the inventor to recover the patents from the Alien Property Custodian, the Court held that the employer held legal title to the invention and patents as a constructive trustee for the inventor and that the inventor was therefore entitled to conveyance of the legal title on demand:

"Where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it, a constructive trust arises. Restatement, Restitution, §160. Compare 3 Scott, Trusts, §462.4. 72 F. Supp. at 388. (Emphasis added.)

Similarly, in Kent v. Klein, 352 Mich. 652; 91 N. W.2d 11, legal title to an incompetent brother's share of the family property was conveyed to his sister because she was the only sibling without creditors at the time the property was divided. Although the sister did not know about the conveyance at the time and made no promise to hold it in trust for her brother the Court held her to be a constructive trustee and compelled transfer of the property to the deceased brother's heirs. The Court stated among other things: "That defendant made no promise to hold in trust is utterly irrelevant. The constructive trust is as contemptuous of promises not made as of promises broken. . . . Fraud in the inception we do not require, nor deceit, nor chicanery in any of its varied guises, for it is not necessary that property be wrongfully acquired. It is enough that it be unconscionably withheld." See also Nelson v. Woodworth, 363 Mich. 244; 109 N.W. 2d 861, 865 (1961).

The circumstances of the organization of the Cherokee Companies, the transfer of their stock to Energy, their obtaining legal title to the construction contracts with General Dynamics, leave little doubt that the stock of those companies is held in constructive trust for Burmah and that Energy is not entitled to retain legal title against the demand of Burmah for transfer to an independent trustee. Significantly, the principals of Energy have never asserted, and have in fact expressly denied, any claim that their legal title to the Cherokee stock gives them any equity in the one asset of the Cherokee Companies — the construction contracts with General Dynamics. Thus, Energy itself recognizes that it is holding the Cherokee stock and contracts for Burmah's benefit. It retains title now against Burmah's demand only as a bargaining ploy to force either unconditional acceptance by Burmah of a bareboat chartering plan that is completely superfluous and unnecessary in the present circumstances, or a monetary settlement with the Energy stockholders.¹

1. This objective is epitomized by Mr. Chen's statement to BOTL's new President in May 1975: "If you want me out, buy me out."

- B. Since the Stock and Contracts of the Cherokee Companies Are Held in Constructive Trust for Burmah, the Cherokee Companies Are Not Citizens of the United States Within the Meaning of the Shipping Act.

Section (2) of the Shipping Act, 1916, as amended (46 USC 802) sets forth the criteria for determining whether a corporation is a citizen of the United States for purposes of the Shipping Act,¹ in relevant part as follows:

(a) Within the meaning of this chapter no corporation, partnership, or association shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States, and, in the case of a corporation, unless its president or other chief executive officer and the chairman of its board of directors are citizens of the United States and unless no more of its directors than a minority of the number necessary to constitute a quorum are noncitizens and the corporation itself is organized under the laws of the United States or of a State, Territory, District, or possession thereof, but in the case of a corporation, association, or partnership operating any vessel in the coastwise trade the amount of interest required to be owned by citizens of the United States shall be 75 per centum.

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1. The Shipping Act definition of citizenship with respect to corporate entities is also adopted by the Merchant Marine Act of 1936 with respect to the U. S. citizenship requirements for Title XI financing construction differential subsidy and other purposes of that Act. 46 U.S.C. §1244.

(b) The controlling interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if title to a majority of the stock thereof is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if the majority of the voting power in such corporation is not vested in citizens of the United States; or (c) if through any contract or understanding it is so arranged that the majority of the voting power may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or, (d) if by any other means whatsoever control of the corporation is conferred upon or permitted to be exercised by any person who is not a citizen of the United States. 46 U.S.C. §802(b) (1970). (Emphasis added.)

* * *

In Meacham Corporation v. United States, 207

F.2d 535 (4th Cir. 1953), cert. dismissed, 348 U.S. 801

(1954), the Fourth Circuit discussed the meaning of "controlling interest" in relation to the citizenship requirements of the Shipping Act. In Meacham an organization

known as American Overseas Tanker Corporation (Overseas)

held an option to purchase three surplus tankers of American registry from the Maritime Commission, but for various

financial reasons was unable to exercise the option. At

the same time, a group of Chinese citizens desired to

obtain control of these tankers. However, only citizens of the United States as defined in the Shipping Act were eligible to purchase these vessels. The Chinese therefore organized a U. S. corporation named "United" and attempted to structure it in such manner as to meet the requirements of Section 2 of the Shipping Act. The capital structure of United consisted of two classes of stock with equal voting rights; Class A and Class B. Class A stock had a par value of \$100/share and its holders were entitled to 90 percent of the earnings and 90 percent of the assets upon liquidation. In contrast, Class B stock had no par value and its holders were to receive 10 percent of the earnings and 10 percent of the liquidated assets. At the first stock issue, the Chinese organizers purchased ten of the Class A shares at \$200/share and the U. S. citizen designees obtained fifteen shares of Class B at twenty cents a share. In addition the Americans held every corporate office except that of treasurer. Thus, U. S. citizens controlled the voting majority but the Chinese interests supplied virtually all of the capital and were to receive 90 percent of the profits. United and Overseas

then developed the following scheme to transfer the Overseas³ option to the use of United. First, the Overseas application to the Maritime Commission to purchase the tankers was amended to substitute National as the purchaser. United then loaned National the money to purchase and outfit the vessels. National in return gave notes secured by mortgages on the ships, executed bareboat charters effective on delivery with United, and assigned the bareboat charter hire to United. Thus, the charter hire paid by United to National was returned to United by the assignment to pay off the purchase loan. As a part of the loan agreement, National also agreed that it would not engage in any other business during the life of the charter and that it would not incur any debts except those to United. Further, the treasurer of National had to be a person approved by United and all checks drawn by National had to bear his signature. A final facet of the agreement provided that the shareholders of National (i.e., Overseas) would put their stock in escrow with an irrevocable option in United to purchase the shares at a price that amounted to \$150,000 per tanker.

Following the consummation of the foregoing financial arrangements, the United States commenced a libel for forfeiture against one of the tankers, the MEACHAM, for violation of Section 9 of the Shipping Act, 1916, (46 USC 808).¹ The Government alleged that United was in fact the owner and that United was controlled by aliens, thus making any transfer of U. S. registered ships to United a violation of the Shipping Act. Alternatively, the Government contended that if United was not the owner, then National, as titleholder of the tankers, was controlled by United, an alien corporation, which control also constituted a violation of the Shipping Act.

In ruling upon the Government's allegations, the Fourth Circuit first noted the parameters of the term "citizen of the United States" in relation to corporate

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1. Section 9 prohibits, among other things, the sale or transfer "to any person not a citizen of the United States. . . any vessel or any interest therein owned in whole or in part by a citizen of the United States and documented under the laws of the United States. . . ." Since Section 9 applies only to "documented" vessels, Section 37 (46 USC 835) was subsequently enacted to apply the same prohibition to all vessels whether documented or not. The definition of "vessel" for purposes of these prohibitions is considered at page 48 below.

entities as defined in Section 2 of the Shipping Act:

We are not embarrassed by the difficulty that sometimes confronts the courts of deciding whether the separateness of a corporate entity from its stockholders should be observed. That difficulty has been solved by the explicit direction of Congress that for the purpose of the statute a corporation is not a citizen of the United States, if its citizen shareholders hold their stock under any trust or obligation in favor of aliens, or if by any understanding or any means whatsoever control is permitted to be exercised by any person not a citizen of the United States. We are therefore compelled to observe the substance rather than the form of the transaction. 207 F.2d at 543. (Emphasis in original.)

The court then itemized those factors in the corporate structure of United that showed it was actually controlled by alien interests:

To the factual question in this case only one reasonable answer can be made. One has only to be told that the Chinese raised six million dollars and the Americans six dollars in order to conclude, at least tentatively, that the Chinese dominated the enterprise; and when the details of the picture are filled in the conclusion becomes irresistible. The whole case for the defense rests upon the participation of Lenfest, Sieling and Tode, three responsible citizens of the United States, in the affairs of the United Corporation. They were its three directors and two of them were its president and vice-president respectively, whilst W.C. Wei, an alien Chinese, was secretary and treasurer with the duty of

countersigning the company's checks. The three Americans also held a majority of the voting stock, for which they paid six dollars, and were entitled to ten per cent of the corporate gains. But the evidence shows that this titular control was given them with the expectation that they would exercise their power in the interests of their Chinese associates and that they acted accordingly. They did not originate the enterprise but came into it at the behest of the New York lawyers who owed their first duty to their Chinese clients, and loyally recognized this obligation throughout the maze of operations that subsequently developed. The testimony shows that at every step the interests of the Chinese were served by the lawyers and by the three American shareholders under their guidance. 207 F.2d at 543-44. (Emphasis added.)

After setting forth the basis for the determination of the actual controlling interest of United, the Court concluded:

Lenfest, Sieling and Tode [the American shareholders] were not in reality investors or directors of the affairs of the corporation. They were American citizens of substance, of long experience in the shipping business who lent their names and citizenship to give the corporation a domestic flavor and rendered expert services in the management of the ships, for which they received salaries and not 10 per cent of the profits of the business to which they were entitled under the certificate of incorporation. They had, in effect, the same obligation to conduct the business of the

corporation in the interest of their Chinese associates who put up all the money, as did the distinguished law firm whom the Chinese retained and they acted accordingly. Judge Bryan was correct when he said in his opinion in this case in the District Court: "These men, however, correct in the performance of their duties, necessarily wielded that stock power under a trust obligation to the aliens." 107 F. Supp. 997, 1005. It follows that the controlling interest in United was not owned by citizens of the United States and that the transfer of the ship, without the approval of the Commission, was a violation of the statutes. 207 F.2d at 545. (Emphasis added.)

Following its conclusion that United was controlled by alien interests, the Court next examined the relations between United and National, including the loan by United to National of the entire purchase price of the ship, the accompanying restrictive covenants on National's business activities, and the option in United to purchase National's stock. The court concluded that National was controlled by United. Since United was controlled by aliens, and National was controlled by United, the Court further concluded that the transfer of the tankers to National violated the Shipping Act.

Under the first alternative, title to the ship would have vested in United, a corporation, a majority of whose voting stock would have been acquired by American citizens without cost and held by them for the benefit of the Chinese who put up the money. Under the actual arrangement, title to the ship was taken by National which for this purpose stood in the shoes of Overseas; but the Overseas--National stockholders--put up only \$1,000, about enough money to cover incorporation and legal expenses of the subsequent transfer to United; while the Chinese in the United-China Trading group, through cash advanced and money borrowed, furnished \$6,000,000 to buy the ships and took an agreement on the part of National not to engage in any other business; and United got possession of the ships together with an option to buy the stock of National for \$450,000, the amount of the bonus that went into the pockets of the Overseas' stockholders. Meanwhile, United controlled National's expenditures through an assistant treasurer named by United. In short, National, which in the beginning was the creature of Overseas, became the alter ego of United, subject to the dictation of the aliens that controlled the latter corporation. Manifestly, a government authority which was unwilling to sell the ships directly to United would have been unwilling to sell them to United by the indirect method, if all the facts had been placed before it. 207 F.2d at 546-47. (Emphasis added.)

In Burmah's case, the Cherokee corporations are clearly the alter ego of Burmah, an alien corporation. They were created at the behest of Burmah. Their stock which was initially held by Burmah's lawyers, has been twice transferred at the direction of Burmah. The present stockholder, Energy and its stockholders, have made no investment of their own. They hold the Cherokee stock in constructive trust for Burmah. See Point A above. The sole assets of these companies, the construction contracts with General Dynamics, were acquired solely on the basis of Burmah guarantees to General Dynamics, and under the present financing arrangements, these assets are kept viable only by Burmah loans subject to covenants prohibiting the Cherokee companies from acting in any independent manner. The Cherokee companies are as much controlled by Burmah as National was controlled by United in the Meacham case. The Cherokee companies clearly are not citizens of the United States within the meaning of Section 2 of the Shipping Act which "observe[s] the substance rather than the form of the transaction."

After the removal of Mr. Kukukundis as President of BOTL, and after the collapse of the original financing plan, the principals of Energy have resisted all of Burmah's

demands that the construction contracts or the stock of the Cherokee companies be transferred to an independent trustee or to Burmah's designee. The Energy principals argue that this unconscionable resistance to Burmah's demands proves that the Cherokee companies are not controlled by Burmah. The suggested conclusion is without validity. It was not until Elias Kulukundis was deposed by Burmah that the Cherokee companies asserted any independence.

Moreover, it is absolutely clear under the circumstances described above that the stock and contracts of the Cherokee companies are held in constructive trust for Burmah. These facts are that (1) the Cherokee companies were organized at Burmah's direction, (2) all of the stock of those companies was held by Burmah's then attorney, John Bullitt of Shearman & Sterling; (3) Bullitt has stated that he understood that he was holding the stock strictly as an accommodation to Burmah and that he was under Burmah's control and direction concerning its disposition, (4) the affidavits of corporate citizenship that Bullitt signed in connection with the Cherokee Title XI applications were fraudulent, (5) when Shearman & Sterling withdrew from the Burmah account as a

result of a disagreement with Kulukundis, Bullitt followed Kulukundis' instructions and transferred the stock of the Cherokee companies to another Burmah attorney, Eli Ellis, (6) Ellis held the stock of the Cherokee companies in the same way that Bullitt held the stock; namely, subject to such instructions as might be given by Kulukundis, (7) Kulukundis instructed Ellis to transfer the stock to his long-time associate Chen, presumably under the same conditions; namely, subject to Kulukundis' control, and (8) Chen and his associates asserted no independence until after Kulukundis' employment was terminated by Burmah.

C. As Non-Citizens the Cherokee Companies Could Legally Enter Into the Construction Contracts But They Are Not Eligible To Issue Title XI Guaranteed Obligations.

As non-citizens under Section 2 of the Shipping Act 1916, the Cherokee Companies could legally enter into the construction contracts with General Dynamics. While Sections 37(d) and (f) of the Act as amended require Government approval for aliens to enter into contracts with shipyards in the United States, general approval for such contracts has been given by the Secretary of Commerce in 46 C.F.R. 221.4(c) and (d) pursuant to General Order No. 8 37 F.R. 28752, December 29, 1972.

Moreover, in addition to the general approval given in the above-cited regulations, the Title XI applications filed by the Cherokee companies fully disclosed to the Maritime Administration the intended interim and transitory role of the Cherokee companies as the purchaser on the construction contracts and their obligation to transfer those contracts at the direction of Burmah to the Owner-Trustee for the U. S. citizen equity participants when the equity commitments were made and the trusts organized. The Maritime Administration acting on behalf of the Secretary of Commerce

approved this role of the Cherokee companies in its preliminary commitment letters on the Title XI applications.

However, while alien shipbuilding in the United States has been approved under current regulations, aliens are not entitled to Title XI guarantees for the notes and bonds issued for construction of their ships. Title XI guarantees may be applied for only by citizens of the United States. 46 U.S.C. §1273(a). And Title XI guarantees may be issued only for obligations to aid in construction of vessels owned by citizens of the United States. 46 U.S.C. §1274.

The Title XI applications originally filed by the Cherokee companies, and the MarAd preliminary commitment given with respect thereto, expressly recognized that the Cherokee Title XI applications would be assigned to, and the guaranteed obligations issued by, an Owner-Trustee for U. S. citizen institutional investors. Nowhere in the commitment is it stated that guaranteed obligations could be issued by the Cherokee companies. Thus, MarAd's November 7, 1973 letter states:

"With respect to the application... of Cherokee I Shipping Corp./Cherokee II Shipping Corp. etc. . . . to be assigned to four trusts to be established by certain institutional investors (Equity Participants) each of which will be administered by a trust institution as owner trustee (Shipowner)..."

* * *

"[the Secretary] Approved the proposed sale and lease financing arrangements whereby the Cherokee Companies will assign all their rights and obligations under the applications and the Construction contracts with General Dynamics Corporation (Shipbuilder) dated October 5, 1973 [sic] (Construction Contracts) to the Shipowner."

While the execution of the shipbuilding contracts by the Cherokee companies does not constitute a violation of the Shipping Act, they are not citizens of the United States within the meaning of the Shipping Act and are therefore not eligible to issue Title XI guaranteed obligations to aid in the construction of the vessels..

D. Regardless of the Citizenship of the Cherokee Companies, the Promissory Notes Under Which the Vessels Are Now Financed Violate Sections 37(b) and (e) of the Shipping Act With Respect to Vessels Whose Keels Are Laid.

1. Sections 37(b) and (e) Prohibit Unapproved Transfers of Interests in "Vessels" or of "Controlling Interests" in Corporations Owning "Vessels."

Even though corporations such as the Cherokee Companies are not citizens of the United States as defined in Section 2 of the Shipping Act, they are still corporations "organized under the laws of the United States or of any State...thereof." Vessels owned by such corporations are subject to the restrictions of Section 37 of the Shipping Act and are subject to forfeiture for violations of that Act. Sections 37(a)(b) and (e) of the Act, as amended,¹ state:

"When the United States is at war or during any national emergency, the existence of which is declared by proclamation of the President, it shall be unlawful, without first obtaining the approval of the Secretary of Commerce:

"(a) To transfer to or place under any foreign registry or flag any vessel owned in whole or in part by any person a citizen of the United States or by a corporation organized under the laws of the United States, or of any State, Territory, District, or possession thereof; or

1. Section (a) is quoted because Section (b) refers in part thereto.

"(b) To sell, mortgage, lease, charter or in any manner transfer, or agree to sell, mortgage, lease, charter, deliver, or in any manner transfer, to any person not a citizen of the United States, (1) any such vessel or any interest therein. . . .

* * *

"(e) To make any agreement or effect any understanding whereby there is vested in or for the benefit of any person not a citizen of the United States, the controlling interest or a majority of the voting power in a corporation which is organized under the laws of the United States, or of any State, Territory, District, or possession thereof, and which owns any vessel, shipyard, dry dock, or ship-building or ship-repairing plant or facilities; . . ."

Two of the stated conditions for applicability of the Section 37 requirements are clearly met. First, the national emergency declared by President Truman on December 16, 1950¹ has never been terminated. Although the stated reasons for this national emergency have long since abated, its continuing validity has not been legally challenged in the context of the Shipping Act, 1916. Therefore, Section 37 would appear to be in full force and effect. Second,

1. Procl. No. 2914, 15 F.R. 9029, 50 App. U.S.C.

to the extent vessels exist under any of the Cherokee contracts, they are "owned" either by General Dynamics, the legal title holder up to delivery, or by the Cherokee Companies to whom title passes at delivery. In either case, they are owned by "a corporation organized under the laws of the United States or of any state. . . thereof." The point at which a transfer of an "interest" in a contract to construct a vessel transfers an interest in the "vessel," and whether the promissory notes involve the transfer of an "interest," are discussed in 2 and 3 below.

2. For Purposes of the Shipping Act a Vessel Comes Into Existence No Later Than Keel Laying and Possibly Before.

Sections 37(b) and (e) regulate the transfer of interests in a "vessel" or controlling interests in corporations owning a vessel. The term "vessel" is defined in Section 1 of the Shipping Act (46 U.S.C. 801) as follows:

"... [A]ll watercraft and other artificial contrivances of whatever description and at whatever stage of construction, whether on the stocks or launched, which are used or are capable of being or are intended to be used as a means of transportation on water."

This definition is substantially broader than that used in the United States admiralty jurisdiction which takes launching as the point at which a ship comes into existence. North Pacific Steamship Co. v. Hall Brothers Marine Railway & Shipbuilding Co., 249 U.S. 122; 39 S.Ct. 221; 63 L.Ed 510 (1918).¹ As originally enacted, the Shipping Act relied on the definition of "vessel" in 1 U.S.C. 3.²

The more extensive definition of "vessel" was enacted in July 1918 along with a series of other amendments to the Shipping Act, to meet the difficulties that developed after its first year of administration by the Shipping Board. At that time, unrestrained German submarine warfare had created a world-wide shortage of shipping and unprecedented foreign demand for American ships. The original Shipping Act controlled transfers of ships only after they were launched. The 1918 amendments were

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1. "A ship is born when she is launched and lives so long as her identity is preserved. Prior to her launching she is a mere congeries of wood and iron -- an ordinary piece of personal property -- as distinctly a land structure as a house, and subject only to mechanics liens created by state law."
 2. "The word vessel includes every description of water craft or other artificial contrivance used or capable of being used as a means of transportation on water."

intended to frustrate attempts to circumvent the Act by partially constructing vessels in U. S. yards and then selling them to foreign interests for subsequent completion. As stated in the House Committee on Merchant Marine and Fisheries Report on these amendments (56 Cong. Rec. 8026) June 19, 1918 (p. 8026):

"Section 1 of the bill adds to section 1 of the Shipping Act. . . . The term 'vessel' is defined as at present in the Revised Statutes (Title 1, Ch. 1), except that it is specifically made to include hulls in course of construction, thus extending the prohibitions against foreign sales to ships building in American yards. In the absence of such a provision, a hull in course of construction does not become a 'vessel' until launched..."

The use of the term "hulls" in this report indicates an intention to extend the prohibition of transfers to actual physical structures occupying shipbuilding ways. Moreover, the Chairman of the Committee in discussing the bill stated:

"Mr. ALEXANDER. Mr. Chairman, the language at the beginning of line 8, page 2, and ending in line 15, page 2; is new matter, and is an amendment of section 1 of the shipping act. It says:

"The term 'vessel' includes all water craft and other artificial contrivances of whatever description and at whatever stage of construction whether on the stocks or launched, which are used or are capable of being or are intended to be used as a means of transportation on water.

"The Revised Statutes define the word 'vessel' to include every description of water craft or other artificial contrivance capable of being used for transportation by water.

"The definition in the bill amplifies the definition in the Revised Statutes to include not only water craft or other artificial contrivance of whatever description capable of being used or intended for use in transportation by water, but to vessels at whatever stage of construction, whether on the stocks or not.

"When the Shipping Board under existing law undertook to commandeer vessels under construction in the several shipyards of the United States, vessels which had been contracted for by foreign powers, they were confronted with the fact that a vessel in the course of construction is not a vessel within the meaning of the law. Our Supreme Court in the One hundred and eighty-third United States, page 424, had held that 'in the absence of such a provision a hull in the course of construction does not become a vessel until launched.' Hence this amendment of the existing law is proposed in order to give the Government control over vessels from the time the keel is laid." (Emphasis added).

Considering the legislative history alone, a "vessel" subject to the restrictions of the Act comes into existence only when the keel is laid. However, in modern shipbuilding practice large sections of a hull may be fabricated in the shops and yard prior to being assembled on the stocks or building ways. Thus, a considerable portion of a yard's building capacity and a substantial

portion of the work required to build a ship may be performed before the keel is laid. The policy of the Act and the phrase "at whatever stage of construction" in the statutory definition of vessel may support an interpretation of the word "vessel" that is broader than that indicated by a literal reading of the legislative history. There are no cases amplifying the statutory definition of vessel. Cases involving building contracts have generally held that the word "construction" implies the building or erecting of some object, Lassen v. U. S. Land Co., 412 P.2d 736, 3 Ariz. App. 167 (1966), or the putting together of materials used in the structure, Shanff v. Southern Illinois Construction Co., 92 S.W. 126, 115 Mo. App. 157.^{1/} Therefore, notwithstanding the explicit reference in the 57 year old legislative history to keel laying, it may be held that for purposes of the Act a vessel comes into existence under a shipbuilding contract when the first hull section is erected whether it is immediately placed on the building ways or not.

^{1/} Site grading, preliminary excavation, assembly of building materials at the site, and subcontracting of some operations have been held not to constitute "construction." See Murphy v. Board of Selectmen of Manchester, 298 N.E. 2d 885 (1973), McClung v. Henrico County, 200 Va. 870, 108 S.E.2d 515 ().

Insofar as Burmah's Pertamina vessels are concerned, a keel has been laid on only the Cherokee I vessel, i.e., the first hull bottom sections have been placed on the keel blocks in the building basin.. This occurred on May 28, 1975. As of July 31, 1975, work on the Cherokee I contract was estimated to be 29.63% complete. Thus, a vessel appears to be clearly in existence under the Cherokee I contract. To the extent major hull assemblies have been fabricated on the Cherokee II through V contracts, vessels may exist for purposes of the Act under those contracts, as well.

3. The Promissory Notes Give Burmah An Interest in the Vessels To Be Constructed and a Controlling Interest in the Cherokee Corporations.

Under the terms of the promissory notes by which Burmah is presently financing construction, the Cherokee companies are prohibited from incurring any debt or engaging in any other business activity without the permission of Burmah. While the notes do not purport to give Burmah a security interest in the vessels, the effect of the covenants is to ensure that no other creditor (with very limited exceptions) has priority

over, or any interest equal to that of Burmah in the only assets of the Cherokee companies, the construction contracts with General Dynamics.

In Chemical Bank New York Trust Co. v. Steamship Westhampton, 358 F.2d 574 (4th Cir., 1965), it was held that a ship mortgage bond was an "interest" in a vessel within the meaning of 46 U.S.C. 835(b) and that the unapproved sale of this bond to an alien bank violated the statute. The Court noted the overall purpose of the Shipping Act restrictions as follows:

"The Shipping Act provides no definition of the term 'interest.' It was first used in 1918 when section 37, now 46 U.S.C.A §835(b), was added. As noted above, Congress was concerned by the continued inroads on American shipping by alien interests. The 1916 restriction forbidding unapproved "sales, leases and charters" of domestic vessels had not proved effective. To plug loopholes that had been discovered in this language Congress added a prohibition against the transfer of "any interest" in an American ship during war or national emergency, unless the transfer was first approved by the Maritime Administration.

"The proposed amendment, set out in H.R. 12100, was designed to combat attempts "by every device which legal ingenuity could suggest to evade" the terms of the 1916 Act. 56 Cong.Rec. 8026 (1918). A war was in progress and Congress was in a mood for extreme measures. Congressman Saunders of Virginia, a member of the House committee that had considered the amendment, expressed the sense of the committee:

'We have sought to make the language used so sweeping and comprehensive that no lawyer, however ingenious, would be able to work out any device under this section to keep the letter, while breaking the spirit of the law.'" 56 Cong.Rec. 8029 (1918).

The Court went on to hold that a mortgage bond holder had an "interest" in the ship for purposes of the Act.

"[20,21] A bondholder is not a general creditor, but has specific rights with respect to the mortgaged property. He is entitled to protection against the unlawful acts of the trustee or others resulting in waste or destruction of his security. Ikelheimer v. Consolidated Tobacco Co., 59 A.363 (N.J.Ch.1904). He may sue to prevent the impairment of his security without reference to the maturity of his bonds. Whitmore v. International Fruit & Sugar Co., 214 Mass. 525, 102 N.E.59 (1913).

"Although a bondholder has less control over the secured property than a direct mortgagee he still possesses a considerable degree of control. The negotiations leading to this mortgage were carried on between the investor and the debtor, here Landesbank and Seatrade. As a general proposition, the trustee must do as he is told by the bondholder unless the instructions are illegal or immoral. The convenience of mortgaging the ship to a trustee should not obscure the fact that the debt secured is that owed to the bondholder.

"Although the mortgage and its agreements are made to and with the [trustee] yet the promise of the [debtor] is for the payment of money to the holder of its bonds, and it was to furnish security for the performance of that promise that the mortgage instrument was executed and delivered. The bondholders are the beneficiaries of the mortgage or deed of trust, and that instrument contains, in effect, a contract made for their benefit through a trustee as a convenience intermediary." *O'Beirne v. Allegheny & Kingua R. R. Co.*, 151 N.Y. 372, 383, 45 N.E. 873, 875 (1897).

"[22] In the early years following the enactment of the Ship Mortgage Act the administrative officials seem to have had no doubt that Congress was concerned with alien ownership of bonds. A few years after the First World War the predecessor of the Maritime Administration, the Shipping Board, was asked to rule whether the assignment of a bond to an alien would violate section 961(d) of the Ship Mortgage Act. The Board, refusing to approve such a transfer, stated:

'Is it not therefore clear that Congress had in view the prohibition against an interest and a right under a mortgage being assigned either directly or as incidental to the assignment of the debt? It is easy to imagine that a person not a citizen of the United States might acquire all of the bonds secured by a mortgage. It would thus become the owner of the entire interests under the mortgage and obviously such a transaction is the very one which Congress sought to prohibit.'

"We are led to the conclusion therefore that, both as a general principle and in the contemplation of Congress, a ship mortgage bond is an interest in the ship mortgaged."
358 F.2d at 583-585.

While the promissory notes issued by the Cherokee companies do not purport to give Burmah a security interest in the vessels or the vessel construction contracts, such as the mortgage bond holder had in Westhampton, the affirmative and negative covenants appear to have precisely the same effect. Thus, at maturity, which is every thirty days, the notes may be called, and if not paid, Burmah could proceed to judgment and levy on the assets, i.e. the contracts and the right to take title to the vessels at delivery, which are secured by the covenants from any competing interests.

Moreover, the affirmative and negative covenants in these notes give Burmah a "controlling interest" in the Cherokee corporations themselves. By virtue of these covenants Burmah limits the business of those companies to construction, chartering and financing the vessels. The covenants preclude, among other things, new contributions of assets, consolidation, merger or sale of assets, declaration of dividends or distributions of assets, and the incurring of any indebtedness or the creating of any liens or encumbrances on the assets. The controls imposed by the promissory notes on the Cherokee companies are on the same order of magnitude as the controls imposed on National by United in Meacham. While Burmah does not have an option to purchase the Cherokee stock, it is clear that that stock is held in constructive trust for Burmah. Alien control exists in Burmah's case, as it did in Meacham, where the U. S. stockholders necessarily wield their stock power under a trust obligation to aliens. The controls provided by the promissory note covenants, in conjunction with the existing trust obligation of Energy, clearly gives Burmah a "controlling interest" in the Cherokee companies. To the extent these companies own vessels under their contracts

with General Dynamics the promissory votes constitute a violation of Section 37(c) as well as of Section 37(b).

V. CONCLUSION

There could scarcely be any argument that the facts concerning the construction and financing of both the Easco and the Pertamina vessels present some extremely perilous legal problems for Burmah. The ultimate penalty for violating the United States citizenship requirements of Section 2 of the Shipping Act, i.e., forfeiture of the vessels to the United States, would obviously have devastating consequences. Under these circumstances, as a prudent matter, Burmah must take every step possible to protect its interests in order to prevent such forfeiture action from being asserted by the United States Department of Justice at some time in the future.

Burmah, of course, is not alone in being a party to a Title XI leverage lease deal whereunder a non-American citizen is the ultimate time charterer and the real party in interest in the transaction. It appears that the structure of the Burmah LNG vessel financing and that undertaken in other MarAd Title XI deals where Shell, Ultramar or Maritime Fruit Carriers were the ultimate time charterers may be similar in many respects. There could, however, be differences between the Burmah situation and the others

in the extent of control asserted by the foreign citizen over the United States companies that held the shipyard construction contracts and which filed the Title XI applications with MarAd.

In the final analysis, however, it is no real protection to Buimah that other companies may also have violated the law. A court would probably not find this circumstance to be compelling in a forfeiture case. This situation does have considerable relevancy, however, in obtaining whatever rulings that we can from MarAd and the Department of Justice at this time to the effect that there is not a cloud on the title to these vessels. In our opinion, it is essential that there be a complete disclosure of the facts to the appropriate United States government agencies (viz., MarAd and the Department of Justice) as to how the financing of both the Easco vessels and the Pertamina vessels had proceeded. Since MarAd has been in part responsible for encouraging these financing arrangements, they should assume the responsibility of obtaining whatever rulings may be possible from the Department of Justice.

The Pertamina construction obviously presents problems that are in many respects different from the Easco vessels. Apart from how the Title XI applications were filed with MarAd by companies presumably under Burmah's control, the Easco financing is committed and the vessel construction contracts are now held by bona fide United States citizen corporations. MarAd and Justice must recognize the problem that has arisen with respect to the Pertamina vessels whereunder Burmah has been forced to advance moneys through the Cherokee companies in order to meet construction progress payments and thus to prevent the construction contracts from being cancelled by General Dynamics. Energy's resistance to transferring these contracts to a bona fide United States citizen corporation or directly to Burmah so that the construction and financing of the vessels can then proceed on a sound legal basis is not evidence that Burmah does not control the Cherokee companies but merely evidence that the financing arrangements countenanced by MarAd permit this type of legal blackmail by the United States citizen corporation which assumes the role of an accommodation party in the transaction. The problem, in other words,

is partly MarAd's as well as Burmah's and MarAd is in this respect quite sensitive to the Frankensteinian situation that it has created. All of this leads to the conclusion that the legal problems relating to the United States citizenship issue both with respect to the Easco vessels and the Pertamina vessels must be recognized and faced at this time. To attempt to brush them under the rug or to ignore them in an ostrich-like approach could have monumentally disastrous consequences for Burmah. . . .

ITEM 5(a) OF SCHEDULE A TO COMPLAINT - COMPLAINT IN ACTION
IN SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW
YORK, ENTITLED BURMAH OIL v. KULUKUNDIS, ET AL.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
BURMAH OIL TANKERS, LIMITED, AND :
THE BURMAH OIL COMPANY, LIMITED, :

Plaintiffs, :

- against - :

Civil Action No. _____

ELIAS J. KULUKUNDIS, MUTUAL :
SHIPPING CORP., EJK CORP., :
ARNE WAFSS, "C" VENTURES, INC., :
AND OVERSEAS NATURAL GAS :
TRANSPORTATION CO., :

Defendants. :
-----X

COMPLAINT

Plaintiffs, by their undersigned attorneys, complaining of
defendants, allege as follows:

The Parties

1. Plaintiff Burmah Oil Tankers, Ltd. (hereinafter
"Tankers") is a corporation duly organized and existing under the
laws of the Commonwealth of Bermuda. Tankers' registered office
is The Bank of Bermuda Building, Hamilton, Bermuda. Tankers
maintains an office at 1185 Avenue of the Americas, New York,
New York. Tankers is in the business of operating a large fleet
of oil tankers throughout the world and it engages in other
businesses and projects related to its tanker fleet operation.
Tankers is a wholly owned subsidiary of plaintiff The Burmah
Oil Company, Limited (hereinafter "Burmah").

2. Plaintiff Burmah, the parent of Tankers, is a corpora-
tion duly organized and existing under the laws of the United
Kingdom (Scotland). Its registered office is 48 St. Vincent
Street, Glasgow, Scotland. Its headquarters is at Burmah House,

Pipers Way, Swindon, England. Burmah is a diversified company engaged throughout the world in the exploration, production, refining and marketing of petroleum and petroleum products, petrochemicals, and other products through numerous subsidiaries. Burmah is a publicly held corporation with approximately 161,000 stockholders and approximately 300 subsidiaries.

3. The defendant, Elias J. Kulukundis (hereinafter "Kulukundis"), is a Greek citizen who resides in the United States and does much of his business in the City and County of New York. His residence address is Soundview Avenue, Southold, Long Island. His present business address is 630 - 5th Avenue, Rockefeller Center, New York, New York. Between November 16, 1970, and January 2, 1975, Kulukundis was employed by Tankers pursuant to a written employment contract. At all times he functioned as the chief executive officer of Tankers. Until October, 1972, he was executive vice president, director, and the chief operating officer of Tankers. Thereafter, he was president, managing director, and chief executive officer of Tankers. On January 2, 1975, Kulukundis resigned from Tankers.

4. The defendant Mutual Shipping Corp. ("Mutual"), is a corporation duly organized and existing under the laws of the State of Delaware with its headquarters and principal place of business at 630 - 5th Avenue, New York, New York. Upon information and belief, Mutual is wholly owned or controlled by Kulukundis and is one of the corporations which Kulukundis uses to transact his own business. At all times while he was employed by Tankers, Kulukundis was the operating head of Mutual. Mutual was incorporated in 1970, succeeding the now-defunct Mutual Shipping and Trading Company, Inc., as Kulukundis' personal company. Mutual Shipping and Trading was a New York corporation existing between 1963 and December, 1974. Mutual is made a defendant herein in each cause of action upon plaintiff's information and belief that Mutual benefited from some of the wrongs

complained of herein.

5. The defendant EJK Corp. is a corporation organized and existing under the laws of the State of Delaware, with its headquarters and principal place of business at 630 - 5th Avenue New York, New York. EJK Corp. is controlled by Kulukundis and is made a defendant in each count herein for the same reasons applicable to Mutual.

6. The defendant Arne Naess is a ship broker with office at 999 Third Avenue, New York, New York. Naess was and is a broker with respect to several of Tankers' vessel transactions and is made a defendant herein only in the first cause of action.

7. The defendant "C" Ventures, Inc., is a corporation with its principal place of business at 7 West 54th Street, New York, New York. "C" Ventures is owned and operated by Michael and Anthony Couloucundis, who are cousins. Michael is the uncle of the defendant Kulukundis, and Anthony is a cousin of Kulukundis. "C" Ventures is the general agent, manager and corporate owner of the business ventures of Michael and Anthony, including Offshore Drilling, Inc. "C" Ventures is made a defendant only in the second cause of action.

8. The defendant Overseas Natural Gas Transportation Co. ("ONG"), is a corporation organized and existing under the laws of New York State. One of ONG's shareholders is Kulukundis. ONG is made a defendant only in the third cause of action.

Nature of the Case

9. During his tenure as executive vice president, president, managing director and chief executive of Tankers, it was Kulukundis' fiduciary duty to Tankers and Tankers' shareholder Burmah, to manage Tankers prudently and with ordinary business judgment, and to act at all times in the best business interests of Tankers, without wasting company assets, without depriving Tankers of corporate opportunities and without diverting

corporate assets or opportunities to himself or others.

10. Contrary to his aforesaid duties and responsibilities Kulukundis, acting individually and in concert with Mutual, EJK and others;

a. breached his fiduciary duties to Tankers, to Tankers' sole shareholder, Burmah, and thereby to Burmah's shareholders;

b. wasted corporate assets;

c. deprived Tankers of corporate opportunities by diverting such opportunities to himself and/or others; and

d. engaged in misleading and wilful conduct which deceived Tankers, and Tankers' sole shareholder, Burmah, all as more particularly alleged below.

FIRST CAUSE OF ACTION

11. Plaintiffs repeat and reallege paragraphs 1 through 10 as if herein set forth in full.

12. The defendants named in this cause of action are Kulukundis, Mutual, EJK Corp. and Naess.

13. Beginning in about December, 1972, and continuing through January 2, 1975, Kulukundis, acting in concert with others, devised, executed and concealed a scheme to defraud Tankers and Burmah by entering into sham transactions which had no substance, for the purpose of creating a fictitious profit on Tankers' books and records for the fiscal year ending December 31, 1972 that would not be detected by Tankers' independent certified public accountants. The scheme was consummated with the knowledge and cooperation of defendant Naess, acting individually and through corporations which he controlled.

14. Pursuant to his scheme to create a false profit, Kulukundis performed and caused to be performed the following acts and practices:

(a) In about December, 1972, Kulukundis and Naess, approached a Norwegian shipping company, A. F. Klaveness & Co. A/S of Oslo (hereinafter "Klaveness"), and proposed to Klaveness a joint venture for the construction and operation of a large new oil tanker. Klaveness expressed its desire to participate in the proposed joint venture.

(b) At that time, Kulukundis anticipated that Tankers would suffer a net operating loss for the year ending December 31, 1972. Kulukundis enjoyed an employment incentive contract with Burnah whereby he was entitled to 10 percent of the net profits of Tankers, and a net loss for the year would deprive him of any incentive income. In addition, Kulukundis was under a directive to improve Tankers' financial performance.

(c) In order to create the appearance of a profit, Kulukundis devised a scheme to obtain money from Klaveness which would be reflected in Tankers' records as a profit. Accordingly, he told Klaveness that the proposed joint venture was conditioned upon Klaveness giving Tankers the sum of \$5.5 million. Klaveness was very desirous of entering into the joint venture agreement because of the profit potentiality for Klaveness, in that Klaveness would not risk any losses or liabilities but would share one-half of the profits from the operation of the vessel.

(d) Klaveness agreed to pay Tankers \$5.5 million. However, by a side oral deal, Kulukundis and Klaveness agreed that the money would be repaid by Tankers with substantial interest at a later time in the form of a

fictitious "financing" commitment from Tankers to Klaveness in the proposed joint venture agreement.

(e) In order for Tankers' books and records to reflect the agreed-upon \$5.5 million payment from Klaveness as a profit, Kulukundis, in January, 1973, created two false and fictitious charter parties for oil tankers, and backdated them to March 25, 1971, and May 5, 1971. These false and fictitious charter parties purported to charter two oil tankers from Tankers to Klaveness for a twelve-month period beginning May 1, 1972. The terms of the false and fictitious charter parties provided for the payment by Klaveness to Tankers of monthly charter hire at World Scale 100. No vessels ever actually operated under the charter parties. A further false and fictitious document was created in January, 1972 and backdated to January 14, 1972. This false and fictitious document purported to be an "addendum" designating two particular vessels to perform under the "charter parties." Kulukundis caused each of these false and fictitious documents to be entered in the official charter party registers of Tankers to give them the appearance of genuineness.

(f) In January, 1973, Kulukundis then caused to be prepared another "addendum" to the "charter parties" which purported to "cancel" the "charter parties" in return for a "cancellation fee" from Klaveness to Tankers of \$5.5 million.

(g) On January 24, 1973, Tankers (Kulukundis) and Klaveness (through its nominee-subsidiary Universal Trading and Shipping) executed the "addendum" to the charter parties, which "addendum" was backdated to April 1, 1972. The addendum purported to cancel the

charter parties effective December 31, 1972, and it provided that Tankers was deemed to have been operating the vessels for Klaveness' account from April 1 to December 31, 1972. The "cancellation fee" purported to be the difference between the charter hire which Klaveness "owed" Tankers under the charter parties at World Scale 100 and the amount which Tankers actually received from the operation of the vessels during that time. In essence, the "cancellation fee" purported to be the price in damages which Klaveness had to pay to get out from under the "charter parties."

(h) Following the execution of the "addendum" to the false and fictitious charter parties on January 24, 1973, Kulukundis caused Tankers to send an invoice to Klaveness for \$5.5 million. The invoice was prepared in January, 1973, but was backdated to December 29, 1972.

(i) On February 26, 1973, Klaveness paid \$5.5 million to Tankers. The \$5.5 million was recorded by Tankers as a profit for the year 1972 on the premise that it was due and owing under the fictitious backdated invoice of December 29, 1972.

(j) In March, 1973, Tankers' independent certified public accountants, during the course of their audit, questioned the calculation of the \$5.5 million income item, because the actual difference between the "charter hire" under the false and fictitious charter parties and the amounts Tankers could have earned from operations of the vessels between April 1 and December 31, 1972, did not amount to \$5.5 million. To cover up this discrepancy Kulukundis asserted to the auditors that the time period involved was one year and should have been November 9, 1971, to December 31, 1972, because that period would on paper

justify the \$5.5 million amount. At Kulukundis' request, Klaveness agreed to and did send to Tankers' auditors a false written confirmation of the extended time period. On the basis of this deception, Tankers' auditors accepted the \$5.5 million income figure.

(k) Having accommodated Kulukundis' fraudulent scheme, Klaveness was rewarded with the joint venture agreement which was executed on January 24, 1973, the same day as the signing of the cancellation "addendum." Klaveness was also rewarded with the assurance that it would earn substantial interest on the \$5.5 million remittance.

15. As a result of the foregoing fraud, Burmah and Tankers have become exposed to substantial present and future liabilities. In order to cover up and falsify the true nature of the "cancellation fee," Kulukundis performed the following acts and practices, all of which were designed to consummate the fraud upon the plaintiffs by repaying Klaveness in what was intended to appear as a separate and unrelated transaction.

(a) As part of the January 24, 1973 joint venture agreements between Tankers and Klaveness, the parties agreed in a written demise charter to designate a new oil tanker vessel to be constructed, and agreed to obtain the financing for the construction. The demise charter executed together with the joint venture agreement provided that Tankers would endeavor to obtain financing for the vessel and, in addition, pay to Klaveness the sum of \$6.5 million on delivery of the vessel as an additional "financing" of the construction. If the joint venture was not performed for any reason, whether or not due to Tankers' default, then Tankers would have to pay \$6.5 million to Klaveness as "liquidated damages." By a

EXHIBIT A
KULUKUNDIS
KLAVERNESS
TANKERS
BURMAH

separate agreement dated January 26, 1973, the \$6.5 million was stated to constitute \$5.5 million plus interest of \$1 million. Thus Tankers would be obligated to pay \$6.5 million to Klaveness under any and all circumstances. These payment agreements had no business justification but were intended to disguise a fraudulent scheme whereby Tankers was to repay \$5.5 million plus interest to Klaveness.

(b) Kulukundis concealed from Tankers' financial officers and its auditors the fraudulent repayment scheme and, consequently, Tankers' books and records reflected it. Tankers' auditors were not able to detect the device and scheme to reverse the 1972 "profit" of \$5.5 million.

(c) Under the terms of the joint venture, Tanker was obligated to designate the new vessel to be constructed by July, 1974, or otherwise Tankers would be obligated to pay \$6.5 million to Klaveness. Instead of designating such a new vessel, Tankers and Klaveness entered into a new and superseding joint venture on July 26, 1974. The new agreement designated a vessel already under construction ("Taiwan Hull No. 2") to perform under the joint venture. The vessel was to be delivered for performance under the joint venture upon its delivery in December, 1978. In this new agreement, identical provisions are contained to the effect that Tankers must pay Klaveness the original \$5.5 million plus interest at the time of delivery of the vessel in 1978. The July, 1974, agreement stipulated that the total amount to be paid would be \$10.5 million, consisting of \$5.5 million principal and \$5 million interest.

(d) Again Kulukundis concealed from Tankers' financial officers and from its auditors the fraudulent repayment scheme. As a result, Tankers' books and records did not reflect a \$10.5 million exposure and Tankers' auditors were prevented from ascertaining the true nature of the transaction.

16. The fraud perpetrated by Kulukundis, Naess and Klaveness was a fraud on Tankers, Burmah and Burmah's shareholders, in that: (a) it created a false profit in 1972; (b) it caused Tankers to risk paying a price of \$5 million in interest for the false profit; (c) it exposes Tankers and Burmah to unknown risks and charges, including shareholders' suits, investigations by government agencies and civil suits.

17. Plaintiffs relied upon the fraud and acted thereon to their detriment by including the \$5.5 million in income in 1972 and by not making provision for potential liability.

18. The defendant Naess knowingly participated in the fraud by, among other things, signing the false and fictitious charter parties and the fictitious addenda thereto. Naess is seeking to benefit from such fraudulent conduct by claiming a brokerage commission from Tankers of 1 percent of the contract price of the new vessel.

19. Klaveness is seeking to enforce its fraudulent deal with Kulukundis by asserting a claim upon Tankers for \$5.5 million plus interest.

20. As perpetrators of the fraud, defendants Kulukundis and Naess are obligated to indemnify and hold harmless both Tankers and Burmah for all losses which they may suffer.

WHEREFORE, plaintiffs demand judgment against the defendants on the First Cause of Action as follows:

I. Against the defendants Kulukundis and Naess for indemnification against any and all losses which plaintiffs may suffer as a result of the fraud, plus interest, costs, expenses and attorneys' fees;

II. Against the defendant Kulukundis and/or Mutual and EJK Corp., for restitution of the 10 percent incentive compensation received by him for the year 1972;

III. Against the defendant Naess, a declaration that his commission agreement of January 24, 1973 is null and void.

IV. Other and further relief as the Court deems just and proper, including costs, interest, expenses and attorneys' fees.

SECOND CAUSE OF ACTION

21. Plaintiffs repeat and reallege paragraphs 1 through 10 as if herein set forth in full.

22. On January 28, 1974, defendant Kulukundis consummated a scheme to defraud Tankers and to waste Tankers' assets by knowingly giving away without any consideration a valuable security interest to his relatives' business ventures. His relatives' company, "C" Ventures, is made a defendant in this cause of action.

23. For over 25 years, prior to joining Tankers, Kulukundis had engaged in the shipping business with his uncle Michael Couloucoundis and his cousin Anthony Couloucoundis. Elias Kulukundis operated Mutual Shipping Corp., Transcontinental Oil and Transportation Corp. and other companies. Michael and Anthony owned and operated "C" Ventures and affiliated companies. These family members engaged in many joint enterprises, vessel chartering transactions and other mutual businesses prior to the time Kulukundis joined Tankers. After he joined Tankers in November, 1970, Kulukundis continued to do business with "C" Ventures through Tankers. For example, the first vessels which Tankers chartered into its new fleet upon commencing business

were from "C" Ventures.

24. On March 24, 1972, and April 19, 1972, Kulukundis caused Tankers to enter into two joint ventures with Carnegie Steamship Corp., a Kulukundis family company affiliated with "C" Ventures (hereinafter referred to as the "Zodiac joint ventures"). Under the joint ventures, Tankers and Carnegie agreed to the joint ownership of two vessels, the Pacific Seahorse and the Gallant Seahorse. Carnegie's contribution to the ventures was two charter parties out to Pertamina, the Indonesian national oil company. Tankers' contribution was the financing of the two vessels for a total of \$22,250,000. The Zodiac joint ventures were to operate the vessels under the charters to Pertamina. The joint venture agreements specified that if Pertamina defaulted on charter hire payments to the venture, then Tankers bore the responsibility for the mortgage payments on the vessels, and Tankers, as bareboat charterer, was legally responsible to the mortgagee banks for payments on the mortgages. Burmah had guaranteed Tankers' obligations. The agreements provided, however, that if Carnegie, as half owner of the vessels, did not reimburse Tankers for Carnegie's one-half of the mortgage payments within 90 days of Tankers' payment on the mortgages, then Tankers had the right to obtain Carnegie's one-half interest in the two vessels for \$250 each.

25. As security for Tankers' right to obtain Carnegie's one-half interest in the vessels upon Carnegie's default in paying half the mortgage payments, the joint venture agreements specified that Tankers had a security interest in Carnegie's stock in each of the two joint venture companies (the Pacific Seahorse was owned by Amurakia Pan Corp., which was owned one-half by Carnegie and one-half by Tankers. The Gallant Seahorse was owned by Hippocampus Corp., which was also jointly owned by Tankers and Carnegie). To safeguard this security interest,

Carnegie's shares in the ventures were placed in escrow.

26. Sometime prior to January 28, 1974, Michael and Anthony Couloucoundis approached Kulukundis to tell him that another Kulukundis family venture, Offshore Drilling, Inc., needed financing for a drill rig. Kulukundis declined to consider Tankers' own participation in the drill rig venture. He did, however, use, give up and dissipate an asset of Tankers in order to help his relatives Michael and Anthony to secure financing for the drill rig venture. Kulukundis told his two relatives that Tankers would release its right to obtain Carnegie's shares in the Zodiac vessels as described above, so that those shares could be pledged to secure bank financing.

27. On January 28, 1974, Kulukundis caused Tankers to enter into a supplement to the Zodiac joint venture agreements, pursuant to which Tankers agreed to release Carnegie's shares in the two vessels to the Guinness Mahon bank in London, as security for an \$8 million loan taken out by Offshore Drilling to finance the Kulukundis family drill rig venture.

28. As a result of giving up its right to acquire these shares, Tankers will now be obligated to pay to Guinness Mahon \$5 million or the outstanding amount of the drill rig loan, whichever is less. If Tankers fails to pay off the loan to Guinness Mahon on Carnegie's default, then the Carnegie shares in the two vessels will be sold and Tankers will lose its security interest.

29. As a result of the foregoing, Kulukundis and "C" Ventures caused Tankers to lose a valuable option in the vessels exercisable for \$500 in exchange for the obligation to now exercise that option for \$5 million. By this scheme Kulukundis gave away a right of Tankers worth at least \$5 million.

30. Kulukundis did not seek or obtain approval from Tankers' or Burmah's boards of directors for the foregoing transaction.

31. By the foregoing transaction, Kulukundis defrauded Tankers out of a right worth at least \$5 million, wasted Tankers' assets and obtained no consideration for Tankers or Burmah.

32. The foregoing conduct was engaged in by Kulukundis solely as a favor to his own relatives and not in furtherance of any business purpose of Tankers. Kulukundis favored his relatives with, in effect, a Tankers guarantee of their drill rig financing. His conduct was in violation of his fiduciary duty to Tankers and Burmah.

WHEREFORE, on the Second Cause of Action plaintiffs demand judgment:

V. Against defendants Kulukundis and "C" Ventures for indemnification for any losses suffered or to be suffered by Tankers and Burmah as a result of their loss of a security interest in the Zodiac vessels.

VI. Against defendant "C" Ventures as the company which controls Carnegie, Offshore Drilling and other Kulukundis family ventures, mandatorily enjoining them to reinstate and return to Tankers its security interest in the Zodiac vessels.

VII. For such other and further relief as the Court deems just and proper, including costs, expenses, interest and attorneys' fees.

THIRD CAUSE OF ACTION

33. Plaintiffs repeat and reallege paragraphs 1 through 10 as if herein set forth in full.

34. During the period between November, 1973 and February, 1974, defendant Kulukundis fraudulently, without disclosures and for no consideration, caused Tankers and Burmah

to give up stock in a valuable subsidiary of Tankers to himself and others. One of the beneficiaries of the fraud, Overseas Natural Gas Transportation Corp., is made a defendant in this count only. In executing the fraud and waste of Tankers' assets, Kulukundis performed the following acts and practices.

35. During the summer of 1973, Tankers negotiated a valuable Transportation Agreement with Pertamina, the Indonesian national petroleum company, for the transportation from Indonesia to Japan of liquified natural gas (LNG). The Transportation Agreement was to be performed by a subsidiary of Tankers, Burmast East Shipping Corp. (hereinafter "Burmast East"). The Transportation Agreement was entered into between Burmast East and Pertamina on September 23, 1973.

36. On November 8, 1973, Burmast East issued 950 of its 1,000 authorized shares as follows:

843 3/4 shares to Tankers
106 1/4 shares to Overseas Natural
Gas Corp. (ONG)

The remaining 50 shares had previously been issued to Far East Oil Trading Corp.

37. As of November 8, 1973, Tankers was the majority shareholder of Burmast East, which ostensibly was Tankers' corporate vehicle for the Pertamina Transportation Agreement.

38. On November 14, 1973, Burmah's board of directors approved the issuance of Burmast East shares as aforesaid. No disclosure was made to Burmah's board of the ownership of ONG, nor of the business of ONG, nor of the reason for ONG's receipt of 10.6 percent of Burmast East's shares.

39. In truth and in fact, ONG is a New York corporation whose sole stockholders are Steven Spencer Davids (alias Steven Verrelle) and Elias J. Kulukundis. Kulukundis concealed this fact from Tankers and Burmah.

40. Kulukundis' ownership of shares in ONG constitutes self-dealing in violation of his duties to Tankers and Burmah. His interest in ONG was not disclosed to Tankers or Burmah, as his duties required him to do.

WHEREFORE, plaintiffs pray for judgment on the Third Cause of Action:

VIII. Against defendant Kulukundis for restitution of all of his stock in ONG, together with any and all other benefits he has received from ONG;

IX. Against defendant ONG for restitution to Tankers of its 106 1/4 shares in Burmah East.,

X. For such other and further relief as the Court deems just and proper, including costs, expenses, interest and attorneys' fees.

FOURTH CAUSE OF ACTION

41. Plaintiffs repeat and reallege paragraphs 1 through 10 as if herein set forth in full.

42. El Padron, S.A. is a Panamanian corporation which does business out of the Bahamas and through a bank account in London. It was incorporated in January, 1973, and is controlled principally by Michael Couloucoundis and Steven Spencer Davids (alias Steven Morelle).

43. On or about December 18, 1973, El Padron entered into a time charter with Pertamina whereby El Padron would designate a vessel to perform for three years at \$744,410 per month charter hire due from Pertamina to El Padron.

44. In or about September - October, 1974, when El Padron had not yet designated a vessel to perform under the Pertamina charter, Michael Couloucoundis approached Elias Kulukundis seeking a vessel to perform under the charter. At that time,

Tankers held the vessel Universe Patriot on charter from Sea Tankers. The charter hire which El Padron was to receive from Pertamina was very high compared with then current market rates.

45. Foreseeing the opportunity to benefit both Tankers and himself personally, Kulukundis agreed to charter the Universe Patriot to El Padron at \$474,406 per month, an amount in excess of then current rates but only \$100 per month more than Tankers was paying Sea Tankers for the vessel, so that the total benefit to Tankers was \$100 per month. El Padron agreed to pay Tankers \$474,406 per month even though El Padron could have chartered in another vessel at even lower rates thus making a greater profit.

46. The foregoing arrangements were effectuated by Kulukundis for the purpose of (1) creating the appearance that Tankers was receiving a benefit from chartering the vessel at above the market and (2) creating for El Padron a monthly profit of approximately \$280,000 as the differential between El Padron's charter income from Pertamina and charter hire to Tankers.

47. In about October, 1973, Kulukundis entered into a scheme and device to misappropriate for himself some of the charter hire differential which, by virtue of his position as an officer and director of Tankers, belonged to Tankers. To accomplish his fraudulent scheme, Kulukundis engaged in the following acts and practices:

(a) On October 28, 1974, at a meeting of the directors of El Padron in Nassau, Bahamas, Kulukundis was elected a director and vice president of El Padron, S.A. and became one of the company's authorized signatories on its checks.

(b) On October 28, 1974, Kulukundis caused a Burmah employee located in the Bahamas, to be elected secretary of El Padron.

(c) In November, 1974, Kulukundis caused El Padron's secretary to open up a Nassau bank account for El Padron, which was done forthwith.

(d) On November 18, 1974, Tankers chartered the Universe Patriot to El Padron for \$474,406 per month, and simultaneously El Padron delivered the vessel to Pertamina under their charter party for \$774,410 per month.

(e) On January 15, 1975, Kulukundis through El Padron's London agents caused El Padron to take the \$552,000 in differential charter hire which had accumulated in its Nassau account from two months' of operations, and remit the same to El Padron's London account. This occurred two weeks after Kulukundis resigned as Tankers' president, but while he was still under contract with Tankers and receiving his salary from Tankers.

(f) Kulukundis has personally received substantial sums of monies from El Padron in the guise of a directors' salary and "bonuses."

(g) Kulukundis never disclosed to the directors of Tankers or Burmah the fact that he was an officer and director of El Padron, a company on the other side of a Tankers transaction, at the time that transaction was entered into. Nor did Kulukundis disclose his personal financial interest in El Padron.

48. As a result of the foregoing, Kulukundis has breached his legal duties to Tankers and has wrongfully misappropriated to himself monies which belong to Tankers, inasmuch as he was obligated at all times to act solely in Tankers' best interests and not for his own self-dealing or profit.

WHEREFORE, plaintiffs demand judgment against the defendants on the Fourth Cause of Action as follows: .

XI. Restitution to Tankers of all monies and benefits received by Kulukundis from El Padron; and the imposition of a constructive trust in Tankers' favor on all monies and interests of El Padron, in and to charter hire from Pertamina.

XII. Such other and further relief as the Court deems just and proper, including costs, interest, expenses and attorneys' fees.

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New York, NY

ITEM 5(b) OF SCHEDULE A TO COMPLAINT - COMPLAINT IN ACTION
IN SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW
YORK, ENTITLED BURMAH OIL v. ENERGY TRANSPORTATION, ET AL.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

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THE BURMAH OIL COMPANY LIMITED and
BURMAH OIL INCORPORATED,

Plaintiffs,

-against-

ENERGY TRANSPORTATION CORPORATION,
C. Y. CHEN, JOSEPH J. CUNEO, JEROME
SHELBY, CHEROKEE I SHIPPING
CORPORATION, CHEROKEE II SHIPPING
CORPORATION, CHEROKEE III SHIPPING
CORPORATION, CHEROKEE IV SHIPPING
CORPORATION and CHEROKEE V SHIPPING
CORPORATION,

Defendants.

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: COMPLAINT

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Plaintiffs, The Burmah Oil Company Limited and Burmah Oil
Incorporated, by their attorneys, Simpson Thacher & Bartlett, for their
complaint herein respectfully allege as follows:

The Parties

1. Plaintiff The Burmah Oil Company Limited ("BOCL") is a corporation organized and existing under the laws of Scotland, with its principal place of business in Swindon, England. BOCL is engaged in various branches of the petroleum industry, including the transportation of crude oil and natural gas.

2. Plaintiff Burmah Oil Incorporated ("BOI"), a wholly-owned subsidiary of BOCL, is a Delaware corporation, having its principal

place of business at 1185 Avenue of the Americas, New York, New York, and is also engaged in the petroleum industry. (EOCL and BOI are sometimes referred to herein collectively as "Burmah".)

3. Upon information and belief, defendant Energy Transportation Corporation ("Energy") is a corporation organized under the laws of the State of Delaware, with its principal place of business at 540 Madison Avenue, New York, New York.

4. Upon information and belief, defendant C. Y. Chen is chairman and principal stockholder of Energy; he resides in Fair Hills, New Jersey, but maintains an office in New York.

5. Upon information and belief, defendant Joseph J. Cuneo is President of Energy and a stockholder thereof; he resides at 72 Greenacres Avenue, Scarsdale, New York 10583.

6. Upon information and belief, defendant Jerome Shelby is Vice President and General Counsel of Energy and a stockholder thereof; he resides at 74 Highland Avenue, Montclair, New Jersey, but maintains an office in New York. (Defendants Chen, Cuneo and Shelby are hereafter sometimes referred to as "the Individual Defendants"). The Individual Defendants, in an attempt personally to benefit therefrom, aided and abetted in and directed the other defendants to perform the wrongful acts complained of herein.

7. Upon information and belief, defendants Cherokee I Shipping Corporation through Cherokee V Shipping Corporation (the "Cherokee Companies") are corporations organized and existing under the laws of the State of Delaware, with their principal places of business c/o Energy Transportation Corporation, 540 Madison Avenue,

New York, New York; the stock of each Cherokee Company is wholly owned by defendant Energy.

Background of the Arrangement
Between Burmah and Energy

8. On or about June 26, 1972, Burmah entered into a Transportation Agreement with a joint venture of Public Service Electric & Gas Company of New Jersey and Algonquin Gas Transportation Company ("Easco") for the transportation of liquefied natural gas ("LNG") from Algeria to the United States for a 22-year term. Under the terms of that agreement, several LNG vessels had to be constructed (the "Easco Vessels"). The transaction contemplated that the vessels would be financed through United States guaranteed loans under Title XI of the Merchant Marine Act of 1936, and equity investments by United States financial institutions which would be the owners of the vessels. Since Burmah was not a citizen of the United States, it was deemed advisable, in order to comply with the requirements of the Shipping Act of 1916 as amended, that United States citizens both hold the contracts for the construction of the vessels and make application for the Title XI loans until such time as the United States citizen owners of the vessels were identified. Defendant Energy and special purpose subsidiaries of Energy, (the "Cryogenic Companies") were chosen for the express purpose of holding LNG tanker construction contracts with General Dynamics Corporation and of making application to the Maritime Administration ("MarAd") for Title XI construction

an and mortgage guarantees in connection with the construction and permanent financing of the vessels.

9. The MarAd applications filed by the Cryogenic Companies specifically represented that the Cryogenic Companies would not be the ultimate owners of the construction contracts or of the vessels but would hold the contracts for transfer to a trustee acting for the owners.

10. When the financing had been arranged, the construction contracts held by the Cryogenic Companies were transferred, as contemplated, to the trustee for the owners.

11. In addition, because the owners had no operating capability, and to satisfy the citizenship requirements of the Shipping Act, 1916, separate contracts were entered into providing that upon delivery of the vessels they will be bareboat chartered to other subsidiaries of Energy which in turn will time charter the vessels to Burmah in order to enable Burmah to fulfill its obligations to Easco.

12. The entire Easco transaction was made possible because BOCL had agreed to guarantee the various construction financing and chartering arrangements.

The Evolvement of the Pertamina Venture
and the Cherokee Companies

13. On or about September 23, 1973, as a result of prior negotiations, Burmah, through its subsidiary, Burmah East Shipping Corporation, entered into a Transportation Agreement with Perusahaan

klambangan Minyak Dan Gas Bumi Negara ("Pertamina"), the Indonesian national oil and gas production company, for the transportation of LNG from Indonesia to Japan. Pursuant to the terms of the Transportation Agreement, Burmah is required to provide LNG vessels for this purpose.

14. In order to accomplish the financing and construction of the required LNG vessels, Burmah and Energy began contemplation of a further arrangement intended to be similar to the earlier arrangement for the construction of the Easco vessels. Therefore, the five Cherokee Companies were created, the stock of which Energy acquired for a nominal consideration. The Cherokee Companies were organized for the purpose of holding contracts with General Dynamics for the construction of the LNG vessels, just as the Cryogenic Companies had served in connection with the earlier transaction involving the Easco vessels, pending the selection of the owners. Construction contracts between each of the Cherokee I through Cherokee IV Companies and General Dynamics became effective on October 1, 1973 and between the Cherokee V Company and General Dynamics on December 1, 1973. The total contract price for the five vessels ("the Cherokee vessels") is in excess of \$500 million. Upon information and belief all the operating expenses of the Cherokee Companies have been paid directly or indirectly by Burmah; and other than the initial nominal purchase price of the stock, neither Energy nor its principals has invested any funds in the Cherokee Companies. Again the entire transaction

was made possible because BOCL agreed to guarantee the various construction financing and chartering arrangements.

15. As had the Cryogenic Companies with respect to the Easco vessels, the Cherokee Companies applied to MarAd for construction and permanent loan guarantees. In each of those five applications, the Cherokee Companies specifically represented, just as the Cryogenic Companies had with respect to the Easco vessels, that the construction contracts would be assigned and transferred by the Cherokee Companies to or for the account of the ultimate owner of the Cherokee vessels.

16. Because of factors beyond Burmah's control, the contemplated financing of the Cherokee vessels was not obtained.

Events Subsequent to Frustration of
the Contemplated Financing

17. Because the contemplated financing plan was frustrated, Burmah, pursuant to its guarantees and in order to protect the interests of all concerned while it sought alternative financing, repaid loans in the total amount of approximately \$24,000,000 theretofore made by the Cherokee Companies from certain banks in contemplation of the financing, which sums had in accordance with the arrangements between the parties been used by the Cherokee Companies to make progress payments to General Dynamics under the Construction Contracts and to meet related expenses. In addition in order to prevent a default under the Construction Contracts, Burmah had no alternative but to lend to the Cherokee Companies additional amounts in excess of

approximately \$54,000,000 (evidenced as in the case of the \$24,000,000 unsecured notes from the Cherokee Companies to BOI) which sums have in turn been used to make progress payments to General Dynamics to meet related expenses. Thus Burmah has, to date, provided funds in excess of approximately \$78,000,000 to the Cherokee Companies enable them to make the progress payments called for under the Construction Contracts with General Dynamics, which as set forth above the Cherokee Companies are holding for the benefit of the ultimate owners of the vessels. Neither the Cherokee Companies nor Energy nor Energy's principals have advanced any funds to meet Cherokee's obligations under the Construction Contracts.

18. The notes payable by the Cherokee Companies to BOI in the total amount of approximately \$78,000,000 are due and payable on November 17, 1975. Upon information and belief, neither the Cherokee Companies nor any of the other defendants have the funds or any source of funds to repay said notes on said date, and none of the defendants intends to repay said notes on said date.

19. At the present rate of progress payments, if other financing is not arranged, Burmah will have no practical alternative but to advance additional sums of approximately \$30,000,000 for the Cherokee vessels by December 31, 1975 in order to prevent a default under the Construction Contracts. Thus by December 31, 1975, if financing for the tankers is not obtained, Burmah will have advanced \$105,000,000. Burmah's ability to continue to finance the progress

payments, in view of other obligations, is uncertain. It is therefore essential that alternative financing be obtained as soon as possible.

Defendants' Frustration of the
Only Present Opportunity to Obtain
the Requisite Alternative Financing

20. Burmah has for some time been seeking diligently to obtain alternative financing for the vessels.

21. Burmah has now entered into a Memorandum of Understanding with IU International Corporation ("IU"), which contemplates that the Cherokee vessels will be owned by American-citizen subsidiaries of IU. That understanding would permit the construction of the vessels for United States flag registry and Title XI guaranteed debt financing, enable Burmah to recoup the \$78,000,000 which it has invested and to avoid further financial exposure with respect to the construction and operation of the vessels.

22. IU, however, has advised Burmah that it will not proceed under the Memorandum of Understanding, and in fact it will not be possible to proceed with the Title XI financing, until defendant Energy has either transferred or agreed in writing to transfer the stock of the Cherokee Companies to designated American-citizen subsidiaries of IU or to an appropriate trustee, or cause the construction contracts to be so transferred.

23. There is at present no entity other than IU ready, willing and able to make the necessary financial and other commitments

which would permit the financing and construction of the vessels and the recoupment of Burmah's investment.

24. Burmah has requested that Energy acknowledge its unconditional obligation to transfer the stock of the Cherokee Companies or cause the transfer of the construction contracts to the American-Citizen subsidiaries of IU or to a trustee for the ultimate owners in order to permit the only possible financing of the vessels to proceed, but the defendants and each of them, acting in furtherance of their selfish interests and in disregard of their representations, have wrongfully refused to acknowledge their obligation to make such a transfer.

25. Energy's and the Cherokee Companies' and the Individual Defendants' wrongful refusal to agree to turn over the stock of the Cherokee Companies or transfer the construction contracts has made and will continue to make it impossible for Burmah to secure financing for the construction of the vessels. If Burmah is unable to secure financing, Burmah stands to lose the more than \$78,000,000 already invested, together with such additional amounts as Burmah may continue to be compelled to advance or be exposed to under its guarantees while seeking alternative means of financing in order to protect its prior investment. Should Burmah be forced to forfeit the \$78,000,000 already advanced to the Cherokee Companies for construction expenses, this amount alone would be far in excess of the capacity of Energy, the Cherokee Companies, and the Individual Defendants to respond to in damages.

26. If Burmah is prevented by the defendants from securing financing for the vessels, it may be unable to carry out its transportation agreement with Pertamina, with resulting losses in profits and good will and exposure to damages which are impossible to estimate or to compensate fully.

27. By their wrongful conduct said defendants are causing immediate and irreparable damage to Burmah.

28. Burmah has no adequate remedy at law.

WHEREFORE, plaintiffs demand judgment:

A. Preliminarily or upon the final determination of this action (i) declaring that defendant Energy Transportation Corporation is obligated, and directing said defendant, to assign and transfer to American-citizen subsidiaries of IU International Corporation or to a trustee for the ultimate owners of the Cherokee vessels, all of the outstanding stock of defendants Cherokee I Shipping Corporation, Cherokee II Shipping Corporation, Cherokee III Shipping Corporation, Cherokee IV Shipping Corporation and Cherokee V Shipping Corporation; or in the alternative (ii) declaring that defendants Cherokee I Shipping Corporation, Cherokee II Shipping Corporation, Cherokee III Shipping Corporation, Cherokee IV Shipping Corporation and Cherokee V Shipping Corporation are obligated, and directing said defendants, to assign and transfer to American-citizen subsidiaries of IU International or a trustee for the ultimate owners of the Cherokee vessels, the Construction Contracts with General Dynamics Corporation,

BEST COPY AVAILABLE

which said defendants are now holding for that purpose, upon the cancellation of the aforesaid notes, or

B. At the final determination of this action against the defendants and in favor of BOI in the sum of approximately \$78,000,000 plus accrued interest on the notes due November 17, 1975; and

C. At the final determination of this action, against the defendants and in favor of BOCL and BOI for all additional ascertainable money damages caused by defendants to plaintiffs by reason of their willful and wrongful acts, and

D. At the final determination of this action, against the defendants and in favor of BOCL and BOI punitive damages in such amount as the Court may direct, and

E. Granting such other further and different preliminary and final relief which to the Court may seem just and proper in the premises, together with the costs and disbursements of this action.

Dated: New York, New York
November 6, 1975

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ITEM 6 OF SCHEDULE A TO COMPLAINT -
FOLDER ENTITLED "NEWS RELEASES"

FORBES

Hubris In St. Louis? Or Dave Lewis And The Lorelei

Not content merely to succeed, some men are tempted to try to succeed where others have failed. Is GD's Dave Lewis one of those men?

By LAWRENCE MINARD

BY ANY STANDARD, David S. Lewis is an immensely successful man. When he was young, 40, he ramrodded into existence one of the great money-making machines of the cold-war era: the F-4 Phantom jet fighter-bomber. A kind of supersophisticated Model T among combat aircraft, the F-4 has fought in almost every major war and minor skirmish since the first one rolled off the line in 1957—and producing nearly 5,000 has kept the cash registers ringing at McDonnell Douglas Corp. in St. Louis ever since.

But Lewis was no one-shot wonder. Now he is across town as chairman of General Dynamics Corp.—and he has once again performed an admirable trick, turning the money-losing defense conglomerate into an able performer in his nearly six years in the front office. One after another, Lewis set straight GD's problem areas—its fighter plane division, its missile business, its commercial jet fuselage assembly line, its submarine pens, its data processing division.

And that left The Monster.

The Quincy shipyard: 176 acres of Massachusetts coastline, birthplace of such great ships as the *Manhattan*, *Long Beach* and *Vanguard*—and a consistent money-loser for General Dynamics since 1963. Rife with featherbedding, beleaguered by foreign competition, Quincy was just a financial and physical mess, full of unprofitable Navy contracts and dirty old shacks when Lewis took over in 1970. Shipbuilding, as a business, didn't seem to make sense in the U.S. It was depreciated down to around \$30 million on General Dynamics' books; it could have been written off mainly for pension costs.

But just as GD's board was thinking of doing exactly that, along came

the energy crisis—and with it a new demand for world traffic in liquefied natural gas. The newspapers were full of it: Algeria to the U.S., Indonesia to Japan. You couldn't float the stuff across the oceans in balloons: Compressed to the density where it was economically feasible to transport, LNG was minus 260 degrees Fahrenheit. You'd need thousand-foot-long ships. And guess where there were more ways capable of handling the big ships than anywhere else in the U.S.? At The Monster.

At this point, Lewis may well have made one of his few serious mistakes. In business, as in investing, it's usually smart to cut your losses; the first loss is the best loss, they say. But Lewis decided not to cut his Quincy losses, even though he could have gotten out cheaply. He decided to make LNG ships.

Lewis did so despite a lukewarm reaction from Col. Henry Crown, GD's biggest stockholder. Crown had opposed GD's acquisition of the yard under former GD Chairman Roger Lewis from the beginning. But under new management, he went along on the LNG decision: "I was not enthusiastic, and I pointed out some of the risks. But I told Dave [Lewis] and Gorden [MacDonald] that the executive committee would accept their recommendation."

Only Reasonable?

Lewis remembers: "It looked to us then that if we just got six ships and that's all we ever got, then we'd end up writing off as much as if we'd shut the yard down right then. It looked as if we couldn't lose. And maybe the LNG program would flower and we'd have a real money-making operation." Indeed, maybe it would blossom, and Lewis would have another F-4, only this time with \$100-

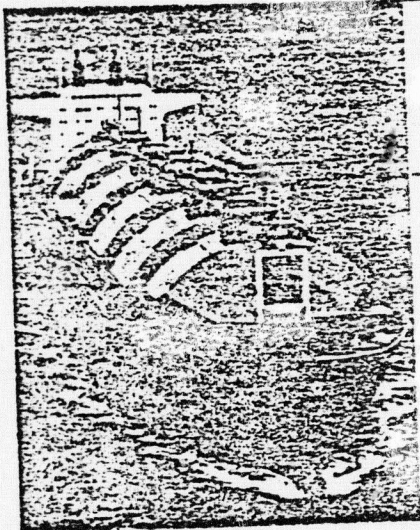


A Lorelei maiden

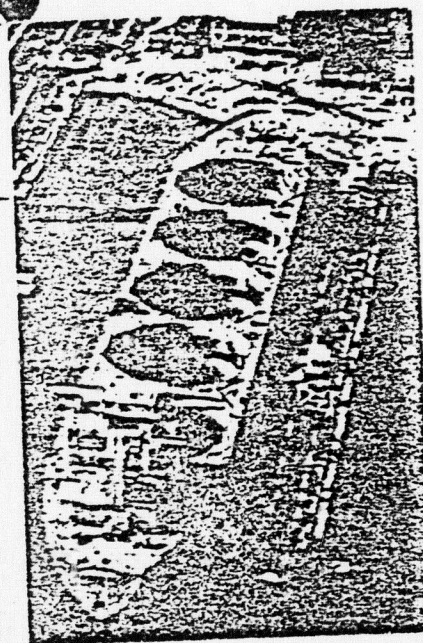
million-plus-a-copy tankers instead of \$6-million-a-copy airplanes.

Call it the Lorelei syndrome. You realize that you are hearing siren songs when you survey a scene that by all odds ought to be terrific—pollution control, prefab housing, railroads, national magazines, educational conglomerates, The Monster—except that it is littered with the whitening bones of executives who thought exactly the same thing. The thought goes this way: If only the right combination of talent and hard work were brought to bear, why, it would be a gold mine! So thought Robert R. Young, as he surveyed the New York Central; Eli Black when United Fruit caught his attention; James Ling and Jones & Laughlin.

During 1973 Lewis rounded up business for not just the six ships he needed to put The Monster in the LNG business, but for ten: three for the Algeria-Northeastern U.S. trade, seven for the haul up to Osaka from Borneo's Badak gas fields. In each case, the catalyst was Elias J. Kulkundis, the mustachioed Greek who ran the tanker operation of Burmah Oil Co.'s far-flung empire. The lure: GD would become the General Mo-



The big difference between IU International's LNG tanker Hilli (left) and General Dynamics' ship (right) is that Hilli has its spheres completed. The GD ship has five big empty holes.



tors of the LNG trade. There were billions in it. How much better that than an ignominious write-down!

Never mind that GD had no experience with such high-technology vessels. Never mind that several other shipbuilders with experience were building LNG tankers. Never mind that Bethlehem Steel Corp., one of the nation's most experienced shipbuilders, was steering clear of the LNG business altogether.

And above all, never mind the way other companies built the 850-ton spheres that were to contain the gas, nestled in the hulls like ten-story-high globes. Other sphere-builders around the world treat each job more as a custom project—after all, they must be built to excruciating specifications. But Lewis bet he could turn them out on an assembly line.

Lewis' first mistake was subcontracting the sphere production to Pittsburgh-Des Moines Steel—a company short on both capital and the experience for what GD wanted. Two years on the job produced some mutual recrimination but no spheres, and, in late 1974, GD bought out PDM's Charleston, S.C. facilities and pumped extra capital into the yard. Total cost: around \$80 million.

Meanwhile, both gas transportation contracts had begun to fall apart. The building of the Algerian liquefaction facilities was delayed, and the Federal Power Commission held up

its approval of the unloading and storage terminals on Staten Island, N.Y. and Providence, R.I.

At Burmah Oil, Kulukundis' tanker operation alone had come close to turning a major international oil company into a shipwrecked bankrupt. He had built up Burmah's tank-

The Very Silent Partners

DEFENSE CONTRACTING is one thing: If you are a couple of months late finishing a \$50-million nuclear sub, there are not five competitors with knockoffs of the very same item watching the calendar in hopes of beating you out of your contract. But things are very different in the international shipping business—and General Dynamics' Dave Lewis must feel as though he has wandered into one of those Eric Ambler novels where a not-quite-innocent American is trapped in unfathomable intrigue on the northern coast of Sumatra.

Lewis won't say who his enemies are, but it's amply clear he has them. One weapon they are trying to wield against him is clear, too. It's a potentially powerful lever called Burmast East Shipping Corp.

According to the Federal Maritime Administration (or MarAd), Burmast East is only one of several shell companies created to facilitate the three-way deal between Burmah Oil, Japan and Indonesia. Burmah owns 57.5% of Burmast, and the full faith and credit of the parent stands behind any deal that Burmast makes. But sidle up to any principal—or would-be principal—in the deal and whisper in his ear, "Who owns the missing chunk of

Burmast East?"—and stand back.

The reaction is never genteel, and sometimes ends in shouting. "Political dynamite," says a competitor.

Why? Because there is a possibility that Burmast East was the vehicle for bribery that was necessary to put the deal together—the shell company was slated for a good share of the profits from the deal. There is speculation in international shipping circles, where purported lists of the minority shareholders of Burmast circulate like grocery coupons, that among the partners are Sutowo and Kulukundis, two of the principal architects of the entire deal. Are they? Does it matter? FORBES doesn't know. Burmah won't talk about it. Neither Kulukundis nor Sutowo were available for comment. General Dynamics doesn't know, and thinks it is all a red herring.

Every so often, it's also rumored, someone puts together a new crop of juicy allegations and mails them to Congressman Jack Brooks (Dem., Tex.), chairman of the Committee on Government Operations. It's this committee's job to watchdog MarAd, which in turn approves the low-interest, long-term loan guarantees Lewis and General Dynamics depend on. And who at MarAd wants to rub-

ber-stamp a deal—even though it is absolutely legal—that an issue-hungry congressman just might be able to turn into a new front-page bribery story? Yet, much more MarAd stalling could blow the deal for GD and Burmah. So someone is using rumors to beat Dave Lewis over the head.

To understand the full flavor of this, consider: The night Hurricane Belle blew by Washington, D.C., a nervous Japanese correspondent appeared at the FORBES bureau there. "Bigger than Watergate," he said, glancing about. "Payoffs... Tanaka... Nixon shokku... very dangerous." But not a scrap of evidence.

These are, after all, cloak-and-dagger days. There is mystery surrounding Burmast East's principals. Grease was grease in the Pacific long before the Greater East Asian Co-Prosperity Sphere came along. Sutowo and Kulukundis are not the Hardy Boys. Is it all a trick to put the burden of proof on MarAd?

The possibility that the rumor mill is being used to paralyze MarAd is one more thing Dave Lewis has to worry about. As the chemists say during the intrigue of the Ambler novels: It's not the way things happen back in Wilmington, Del.

er fleet to 42 vessels, just in time for the Organization of Petroleum Exporting Countries to send the world market into chaos. Burmah continued to eke out progress payments for GD—but they sacked Mr. K.

Firing was in fashion: The Americans dumped a president, the Japanese a premier, and the Indonesians dumped Lt. General Ibnu Sutowo, Pertamina's chief, who in effect had hired Kulukundis and Burmah to hire General Dynamics to build the tankers. The political universe on whose order Lewis' dreams for The Monster shipyard was built was decidedly out of order. And suddenly Lewis' ships with contracts were on scarcely firmer ground than his competitors' ships without contracts.

With this difference: The competing shipyards—building tankers for IU International, Leif Hoegh and Gaz Ocean—have already produced completed ships. In effect, there are several other vessels completed or nearing completion competing for two of the seven Indonesia-Japan trade charters. But GD has yet to produce a sphere, much less barge it from Charleston to Quincy. And the Japanese want to produce their own ships for the rest of the business.

Down The Dusty Path

With this kind of glut in prospect, naturally the Japanese and the Indonesians are already jockeying to extract the cheapest possible charters for the transportation deal. If that means breaking the spirit of their contract with General Dynamics by enforcing the letter of it—and reneging, to get their ships elsewhere—well, almost nothing seems impossible.

So it comes down to this: Dave Lewis has not yet lost to Lorelei. If he can deliver his first ship to Bon-tang, Borneo, Indonesia by next summer, if competing shippers and the Japanese shipyards don't undo the original agreements, and if the U.S. Government approves the loan guarantees, then Lewis will about break even on his first eight ships. But not much more. The world is not on the verge of a shopping spree for LNG tankers, and the assembly line principle is a long way from paying off. If the program falls apart, General Dynamics will be stuck with a monster even more monstrous. Write-offs through 1975 exceeded \$21 million; \$8 million more is expected this year.

Does Dave Lewis rue the day he heard the songs the sirens sing? "Sure, there have been a lot of heartaches and sometimes we wish we'd just closed the yard," says Lewis. "But we still believe the program will be successful." ■

Once More, With Ambition

After you've climbed one peak, the next goal should be obvious: Find a taller one.

WHAT do you do when you retire, after 44 tumultuous years in which you had risen to the presidency of a big company—in fact, the world's biggest manufacturing company? If you're former General Motors President Edward N. Cole, who retired in 1974, you take on some other little job. Like, say, remaking whole segments of the economy.

"My thrust at the moment," says Eddie Cole, still trim and dazzlingly energetic at 66, "is in two directions—transportation and energy."

Take transportation first. After keeping the U.S. on wheels for decades, Cole now hopes to give it wings. Detroit-based International Husky, Inc., which he put together and of which he is chairman, wants to develop a comprehensive U.S. air cargo network, using jumbo jets specifically designed for freight only.

What would they carry? Meat already cut, wrapped and priced, moving direct from packinghouse to supermarket. Perishable produce moving quickly and efficiently from farm to retailer. Autos even.

"With a preplanned system," Cole argues, "we feel that we can reduce the price of air freight sufficiently to attract even nontime-sensitive cargo, which can be intermixed with time-sensitive freight to achieve the operating conditions we need—an 85% load factor, flying 15 hours a day."

Of course, a few small preconditions would have to be met, such as a new and larger cargo carrier that is not a mere cargo-carrying version of a passenger jet. Like a design he took for development to Boeing, which has dubbed it the 754. It would be twice as large as the 747F now used for cargo, with a payload close to 400,000 pounds and room for 74 Cadillacs, for example. It could carry 90% of the items the military ship overseas.

Developing such a plane would naturally cost a lot of money: \$2 billion to \$3 billion, he estimates. Since that sum is even beyond the reach of a General Motors top man's personal resources, Cole is hoping for passage of the Airlift Expansion Act, now being studied by the House Armed Services Committee. If passed, it would probably provide incentives to commercial plane builders to design and build a new air freighter.

Big plane boondoggle? Raid on the taxpayer? Cole insists that the sav-

ings would be substantial, both to the taxpayer, in lower food prices due to reduced spoilage and waste, and to the manufacturer, who can move goods quickly and safely. As

for energy use,

Cole says his studies have shown that his projected airlift system is competitive in energy consumption with trains and trucks. Then there are the potential military savings: "Some people have estimated that our defense costs could be reduced by \$5 billion to \$10 billion annually, because much of the defense material and manpower that we have offshore could be brought home and redeployed in an emergency."

Who is in Cole's group? International Husky's backers include such high-powered corporate types as former chairmen Edwin Gott of U.S. Steel, Gordon Metcalf of Sears, Roebuck, Fred J. Borch of General Electric, Hewlett-Packard Chairman David Packard and President John Emery Jr. of Emery Air Freight, the leading U.S. air freight forwarder.

Energy To Burn

Working with such friends on so expansive a project would amply occupy most men, but not Cole. So he has also been pushing International Husky toward the energy problem. Having worked on energy as a member of the National Academy of Engineering, Cole (who got his engineering training from General Motors' in-house engineering school) believes a fuel based on hydrogen might restore our fast-dwindling fuel supply.

Right now he feels the answer is hydrazine, a compound of hydrogen and nitrogen used as a propellant in rocket engines. Hydrazine is now made from natural gas, but Cole contends it can be made from substances as common as air and water, with nuclear power as the fundamental energy base, and then used to run automobiles. Rocket Research, a West Coast company of which Cole is a director, is making a joint study with International Husky and Uniroyal of a possible hydrazine plant in Kuwait using now-wasted natural gas.

Restful retirement? Nope. But for Ed Cole, it beats full-time golf. ■



Cole of International Husky

Burmah Oil's U.S. Aid Bid Studied for Possible Fraud

By TERRY ROARDS

The Securities and Exchange Commission can receive such Governmental permission, the Federal Maritime Administration and at least one Congressional committee are investigating whether or not Burmah Oil Company, a British concern, illegally received commitments for Federal guarantees or subsidies to build at least eight huge tanker ships in this country. Hundreds of millions of dollars in shipbuilding projects and thousands of American shipyard jobs may be in jeopardy because of the possibility of fraud in applying for the Government backing, which is illegal for foreign companies under Federal law.

The ships are under construction at the Quincy, Mass., yards of the General Dynamics Corporation, which received the shipbuilding contracts from Burmah affiliates or subsidiaries. A major portion of the \$1.06 billion in these contracts is understood to be in question. An issue is whether the ships have any right to American subsidies or loan guarantees, since Burmah is not an American company. Federal law specifies that only domestic con-

cerns can receive such Governmental permission, the Federal Maritime Administration and at least one Congressional committee are investigating whether or not Burmah Oil Company, a British concern, illegally received commitments for Federal guarantees or subsidies to build at least eight huge tanker ships in this country. Hundreds of millions of dollars in shipbuilding projects and thousands of American shipyard jobs may be in jeopardy because of the possibility of fraud in applying for the Government backing, which is illegal for foreign companies under Federal law.

Robert J. Blackwell, Assistant Secretary of Commerce for Maritime Affairs and head of the Maritime Administration, said in a telephone interview from Washington last night that the agency "has no information to indicate that there was fraud of any type or wrongdoing" in the Burmah applications.

However, Mr. Blackwell also said that some of the original applications filed by the Burmah affiliates had been "more or less aborted" because the companies could not fulfill some of the conditions specified by his agency.

He added that the structure of the corporate entities involved in the shipbuilding contracts was being changed in an effort to assure compliance with Federal law. This was confirmed by an attorney for Burmah, who indicated that General Dynamics would receive an equity interest in the entities.

A memorandum of law prepared by a Washington law firm for a Burmah subsidiary states flatly that the affidavits of corporate citizenship of certain Burmah affiliates that applied for the so-called Title XI guarantees from the Maritime Administration "were fraudulent."

Federal law stipulates that ships built under Federal guarantees or subsidies that were fraudulently obtained are subject to Government seizure. Thus, Burmah could lose a major shipbuilding investment in a blow that would imperil its already troubled financial underpinnings.

Without the loan guarantees, the construction projects would most likely be halted, according to informed sources, because no private financing of the magnitude required could possibly be found in the absence of Govern-

362 Million Loss in 1975

Federal investigators are also looking into allegations of massive self-dealing by a former officer of a major Burmah subsidiary in this country, Burmah Oil Tankers, which lost nearly \$82 million in 1975.

Evidence also exists that payoffs were made by Burmah subsidiaries or affiliates to obtain contracts to ship liquefied natural gas for the Indonesian Government to certain Japanese utility companies. The payoffs were allegedly made to unnamed Indonesian generals or other officials.

The potential impact thus extends all the way to Japan, where certain utility companies agreed to buy Indonesian natural gas to be shipped on some of the Burmah tankers now being built in Massachusetts.

The potential impact on General Dynamics remains uncertain, but any loss of Government guarantees or subsidies by Burmah would raise the possibility of a default on its financial obligations to the American concern.

A Major Contractor

General Dynamics might then be forced to halt work on the ships. The company is a major defense contractor whose fortunes are closely monitored by the Government. It is building the F-16 fighter for the Air Force and is producing nuclear submarines for the Navy. It also has contingent agreements to produce military aircraft for the countries of the North Atlantic Treaty Organization and for Iran.

A spokesman for General Dynamics, when asked about the situation, said, "We are in contact with Burmah and we know as much as they know. We are totally unaware of anything of that nature involving Title XI insurance."

Legal Advice Sought

In Washington the S.E.C. is investigating to determine whether American depository receipts for Burmah shares, which trade in the over-the-counter market, should be permitted to continue trading in light of the possibility of inadequate corporate disclosure.

The S.E.C. is also examining trading in General Dynamics shares by officers of the company. In the last eight months four key executives, including the corporation's chairman and the head of the Quincy Shipbuilding Division, have sold some \$7.2 million in stock—most of their holdings.

During this period, doubts

were mounting over the viability of the contracts with Burmah, and the management of Burmah Oil Tankers was asking for legal advice relating to the Government guarantees and subsidies.

A General Dynamics spokesman said last night: "There is absolutely no substance to any suggestion that any officer of General Dynamics sold stock on the basis of inside information that problems existed in the L.N.G. [liquefied natural gas] tanker program. The company has no indication of any kind that the S.E.C. proposes to investigate such officers' stock transactions."

Internal corporate documents from Burmah and confidential memoranda obtained by The New York Times pertaining to Burmah's situation show that serious questions over the legality of the guarantees and subsidies were raised by lawyers 11 months ago.

One memorandum, prepared by the firm of Kurrus & Jacoby, says: "The continued involvement of those companies in the ship construction contracts will create a cloud on the title of the vessels and could subject them to forfeiture to the United States." Some \$476 million is involved in these contracts alone.

The memorandum, dated Sept. 16, 1975, said the financing arrangements "present some extremely perilous legal problems for Burmah." It suggested that "forfeiture of the vessels to the United States would obviously have devastating consequences."

Court Precedents Cited

The memorandum also suggested that no remedy existed for ships already under construction and backed by Government guarantees and subsidies that had been fraudulently obtained, because court precedents affirm that a ship falls under the jurisdiction of the Shipping Act as soon as its keel is laid or a major hull section is built, if the guarantees were previously applied for.

Other documents obtained by The Times indicate that officials of the Maritime Administration may have been aware that violations of Federal law might have been committed in connection with the Burmah guarantees and subsidies.

In a memorandum to John J. McMullen, former president of Burmah Oil Tankers, Richard Kurrus of the Washington law firm reported that he had en-

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merged in a conversation about Burmah on May 8, 1975, with Mr. Blackwell, the Assistant Secretary of Commerce, and Samuel Nemirow, assistant general counsel of the Maritime Administration.

Mr. Kurrus reported that he met with Mr. Blackwell for lunch later the same day and Mr. Blackwell said he felt that Elias J. Kulukundis, an earlier president of Burmah Oil Tankers, "may have acted imprudently and perhaps even improperly in the deals he set up."

Mr. Kurrus quoted Mr. Blackwell as saying that he was aware that problems had arisen over the Title XI financing and that "everyone recognized" that the formal arrangement approved by the Maritime Administration "was based on friction."

Asked about this, Mr. Blackwell acknowledged he had met with Mr. Kurrus on May 9, not May 8, 1975, and that they had discussed Burmah's problems. However, he flatly denied that he ever said that the financing arrangements had been "based on fictions."

Mr. Kurrus expressed shock yesterday when informed that a copy of his memorandum had been obtained by The Times. When asked if he wanted it read back to him, he replied, "Don't read it. I don't want to be trapped. That's too dangerous."

Mr. Kulukundis, a Greek with substantial business interests in this country, figures prominently in many of the internal Burmah documents obtained by The Times. He was ousted as the president of Burmah Oil Tankers early in 1975 after the Bank of England rescued the Burmah parent company with \$650 million in loan guarantees following the disclosure of massive losses by the American tanker subsidiary.

Several other officers were dismissed, including James Lunden, the chairman, and Nicholas J. D. Williams, the managing director. Alastair Down became the new Burmah chairman, Stanley J. Wilson was made president and Mr. McMullen was named the new president of Burmah Oil Tankers, the troubled subsidiary.

Lawsuit Never Filed

Ten months later, Mr. McMullen, himself a former official of the Maritime Administration and former chairman and president of United States Lines, was deposed in another Burmah upheaval after he had recommended lawsuits against Mr. Kulukundis and several other individuals allegedly in-

involved in self-dealing.

A confidential memorandum from another Washington law firm, Seymour & Patton, to Mr. McMullen prior to his dismissal related that Mr. Kulukundis had financial interests in at least two companies that had dealings with Burmah Oil Tankers while Mr. Kulukundis was president of the Burmah concern.

Mr. McMullen asked Seymour & Patton to draw up a lawsuit against Mr. Kulukundis last November. It was never filed and Mr. McMullen was dismissed in December by officers of the parent company in London. Last month he received a \$1 million settlement from Burmah after complex negotiations over his sudden termination.

Reached by telephone yesterday at his New York office, Mr. McMullen declined to comment, although he indicated that he felt Burmah was being victimized by forces outside the company. He did not deny the principal details of his financial settlement with the company.

The S.E.C. is looking into the circumstances of Mr. McMullen's dismissal and the subsequent cash settlement to determine what relationship, if any, they might have to any potential disclosure of Burmah's internal difficulties.

The commission has asked White & Case, which represented Mr. McMullen in the negotiations, and Simpson, Thacher & Bartlett, which represented Burmah, for transcripts of the mediation proceedings relating to the \$1 million settlement.

'Difference of Opinion'

The two law firms, both among the most prominent in the country, are understood to have declined within recent days to agree to the S.E.C.'s requests. "We had a difference of opinion and we settled it like gentlemen," Mr. McMullen said yesterday.

The transcript is understood to contain numerous damaging statements concerning Burmah's internal affairs as well as its dealings with individuals outside the company, including the unnamed Indonesian generals.

Another document, a "privileged attorney's work product" from Thomas E. Patton of Seymour & Patton, describes an

interview with Mr. Williams, the former Burmah managing director, on Nov. 10 of last year at Broome Manor in the London suburb of Swindon.

The report of the interview, which took place nine months after Mr. Williams was dismissed, says the former Burmah managing director admitted that some Burmah subsidiaries or affiliates had been set up in Indonesia as conduits for payoffs to officials.

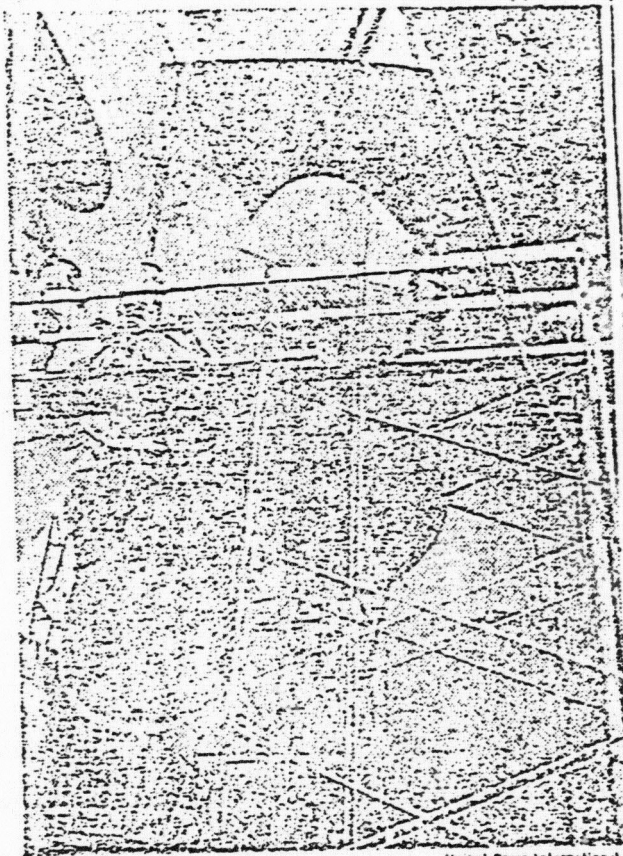
'Nominee' Concerns Used

The report says Mr. Williams "noted that in that part of the world the only way to do business was to use nominee companies to give people like the generals some money." One of these companies, Astrofina del Mar, Mr. Williams reportedly said, "was simply the nominee whereby Indonesian officials got money."

The memorandum deals extensively with the activities of Mr. Kulukundis when he was president of the tanker subsidiary and mentions that he "had some relations with Pertamina before he joined Burmah." Pertamina is the English word for the Indonesian state oil company.

This is the entity that would be involved in the sale of Indonesian liquefied natural gas to the Japanese utility companies. According to this arrangement, the gas would be carried on some of the ships now being built by General Dynamics at the Quincy shipyards.

Representatives Les Aspen, the Wisconsin Democrat, has raised questions about the Government backing of the shipbuilding contracts both on the basis of "serious questions" regarding the citizenship of the companies and because the ships, once completed, will not be used in any trade with the United States.



United Press International

The propeller being installed on a tanker as it was being built last year at the General Dynamics yard in Quincy, Mass., for affiliates of the Burmah Oil Company.

Corporate Profile

Burmah Has Had to Sell Much of Its Oil Empire

Assets Needed
to Pay Debts

By TERRY ROBERTS
The New York Times

ON, Aug. 20—The Oil Company, which is under scrutiny for fraud in the United States, is one of those big British companies that grew with the Empire, long after the Empire collapsed, built on its own.

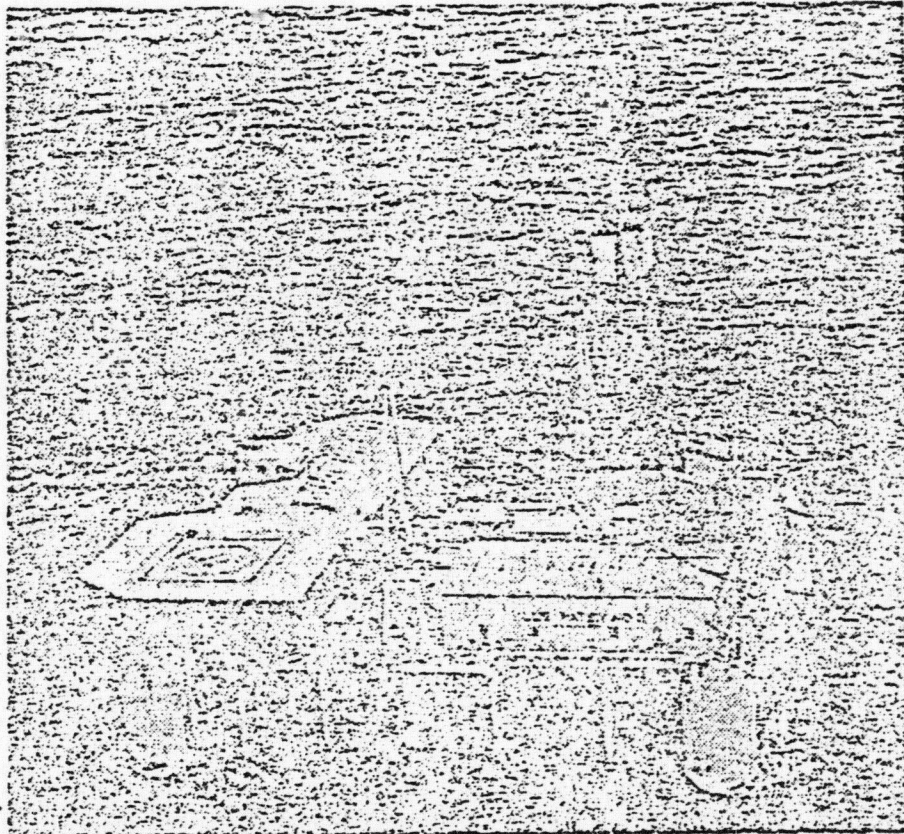
Only a decade ago, it did virtually none of its work in Britain. The company started in 1871 in what was then as the Rangoon Oil Company. Later it found Britain's petroleum colossus, the British Petroleum Company, and it had close ties with the Dutch/Shell group.

Burmah was run by former school boys (in America they would be called "prep school boys") who had British investment in the continent. Burmah was owned by 160,000 investors who sat on their hands like the shareholders of the American Telephone and Telegraph Company and now have a 41 percent stake in their investment this year.

Bad Management
As a result of surprises, the company and what the company now recognizes as bad management, Burmah, early last year, has had more than half what it needed.

The main question now in Washington concerns eight big tankers to be liquefied natural gas. Ships are being built by General Dynamics Corporation at its Quincy, Mass., yard for Burmah under a billion contract, but really it is not entirely clear who owns them. Burmah has a problem if it loses them.

The tankers are being built with backing from the Fed-



This oil rig was installed by Signal Oil in the Gulf of Mexico and was then bought by Burmah Oil of Britain. Burmah later sold the rig along with other U.S. holdings.

eral Maritime Administration, which is prohibited from providing such aid to foreign-owned companies. There is a suspicion that, while the contracting companies may be American, they are ultimately owned by Burmah.

Bribery Alleged

Another problem is alleged bribery. Burmah, which would charter the tankers from whoever owns them, has a contract to carry liquefied natural gas from Indonesia's rich offshore fields to Japan. An article in the The New York Times reported this week that someone may have bribed Indonesian generals to win the contract. In New York yesterday, Burmah flatly denied that there was any fraud behind the application.

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Dynamics Stock
Falls Sharply

By TERRY ROBERTS

The shares of the General Dynamics Corporation plummeted 8½ points to close 50¼ yesterday on the New York stock exchange. It was their first day of trading following the disclosure of the problems for the company involving more than \$1 billion in shipbuilding contracts from the Burmah Oil Company of Britain.

General Dynamics shares traded at all Thursday, when the disclosure was made. The stock opened yesterday at 51 P.M. on a block of 27½ shares at 51, down 7¼. Later it touched the day's low of 49¼ and the high of 51 before closing at 50¼.

The paper loss on the company's 10.8 million shares outstanding amounted to nearly \$92 million. The decline reflected reassessments by Wall Street analysts of investors in light of the potential difficulties with Burmah contracts.

A Major Block?

Reports circulated that a large block of General Dynamics shares had been offered, hanging the market, but the total consolidated trading volume of 105,300 shares reported for yesterday indicated that no large blocks had been traded.

An article in the Thursday issue of The New York Times disclosed that Government authorities were looking into the possibility that fraud had been committed when certain Burmah affiliates applied to the Federal Maritime Administration for Government loan guarantees as American companies.

Such guarantees are available only to American companies. A law firm retained by Burmah Oil Tankers, an American subsidiary of the parent British concern,

Continued on Page 31, Column

Burmah—at a Glance

12 mos. ended Dec. 31*	1975	1974
Revenues.....	\$1,845,000,000	\$1,729,100,000
Net income.....	(18,526,200)	27,483,200
Earnings per share.....		
Assets, Dec. 31, 1975.....	\$2,183,211,000	
Stock price,** Aug. 20, 1976 O.T.C. bid-ask: 9/16-11/16		
Stock price, 1976 bid range: 9/16-11/16		
Employees, Dec. 31, 1976:.....	35,600	
(Loss)		
* Dollar figures based on yesterday's pound close of \$1.78		
** Burmah American Depository Receipts		

The New York Times

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General Dynamics Stock Falls as Trading Reopens

Continued From Page 27

sued a confidential legal memorandum last September asserting that the affidavits of corporate citizenship of the Burmah affiliates "were fraudulent."

Both General Dynamics and Burmah have denied that any fraud was committed in connection with the applications for Government guarantees. General Dynamics charged Thursday that unidentified competitors had been trying to overturn the Burmah contracts.

The ultimate penalty for fraud in connection with applying for Government guarantees on shipbuilding projects is forfeiture of the vessels to the Government, even if their construction remains incomplete.

No allegations of fraud have been made about General Dynamics, which is merely executing the shipbuilding contracts that it received from Burmah. Rather, the doubts in the investment community relate to the viability of the contracts.

Wall Street analysts expressed confusion yesterday about the new outlook for General Dynamics. The \$1 billion-plus involved in the Burmah contracts represents a significant portion of the General Dynamics backlog of orders.

A Halt Is Doubted

However, analysts doubted that construction would actually be halted on the ships, which are being built at the company's Quincy, Mass., shipyard, even if the Government seizes them. The theory is that the work would continue under the Government's aegis because most of the 5,000-man work force at the shipyard is involved with the Burmah vessels.

Some analysts concluded, nevertheless, that uncertainty had entered the outlook for General Dynamics, reducing the attractiveness of its stock as an investment. The research department at Mer-

rill Lynch, Pierce, Fenner & Smith was understood to be downgrading its rating of the issue from an "aggressive buy" recommendation.

"This is going to impact the stock negatively for some time—over the next several months," said one analyst, who noted that aerospace-defense stocks in general had been weak in recent weeks.

This analyst said the group turned weak right after the Democratic National Convention, possibly because of the announced intention of Jimmy Carter, the Democratic Party's nominee, to reduce the national defense budget if he is elected President.

Burmah Has Sold Much of Its Assets

Continued From Page 27

for Federal aid to build the tankers. They will be owned, the company said, by General Dynamics and other American companies. Burmah said nothing about bribery, and today a Burmah spokesman in London said the company had so far not made a statement.

Burmah began an acquisitive trend 10 years ago. First it bought Castrol, a supplier of a prestige motor oil used widely by owners of British sports cars. Next it acquired companies that made construction equipment, automobile replacement parts, trailers and cranes. Burmah took major positions in Britain's North Sea oil, and in 1974 it purchased the Signal Oil and Gas Company for \$500 million.

Key Characters

The men who were running the show then—but are running it no longer—were Nicholas J. D. Williams, the chief executive known as Nicky, and James Alexander Lumsden, chairman, a part-time function. Both had gone to Rugby, the public school not far from Birmingham, although 10 years apart, and

both were lawyers. Mr. Williams's sport is sailing. In Who's Who, Mr. Lumsden lists his sports as "shooting and other country pursuits."

The man who caused many of their troubles Elias Kulukundis, a Greek, was cut from different cloth. Mr. Kulukundis ran Burmah's tanker subsidiary in the United States, until just before he was ousted early last year. Mr. Kulukundis has been called "an eternal optimist."

Mr. Kulukundis had taken a risk, just before the oil crisis—a long lease on an oil terminal in the Bahamas to transfer oil from super-tankers to smaller tankers for shipment to the United States. He had also chartered tankers at high, long-term rates.

Effect of Boycott

With the Arab oil embargo, however, few tankers could use the terminal, and few customers could be found for the tankers at the high fixed rates that Burmah had to charge.

Meanwhile, Burmah's 21 percent holding of British Petroleum stock, its legacy from having helped set up the company, was plunging with the values of all other oil companies.

The tanker problems and

the decline in B.P. stock undid everything else. The acquisitions had been made with hundreds of millions of dollars worth of loans, but the assets behind the loans, particularly the B.P. stock, had shrunk. Burmah's big bankers, notably Chase Manhattan, got nervous.

That was early last year. Management was turned inside out, and a new chairman, Alastair Down, moved in from the deputy chairman-ship of B.P. to placate the bankers. Burmah sold the Bank of England its B.P. shares for \$318 million.

Since then, Burmah has sold about \$1.2 billion of its assets, mostly to pay off loans, and in the process Burmah has all but disappeared as an oil company. It has sold Signal to R. J. Reynolds Industries Inc. and most of its North Sea operations to the British Government. Burmah also has sold its other oil- and oil-related business in India, Ecuador, Australia and Canada.

"What they have now," said a securities analyst in London, "is their industrial interests, their contract with General Dynamics and a very large tanker fleet, which is still losing money."

General Dynamics Says Competitors Conspire to Balk Burmah Ship Work

FERRY ROBARDS

General Dynamics Corp. charged yesterday identified competitors, desperate pressure from "and other sources," conspiring to overturn its major shipbuilding project—the Burmah Oil Company—Britain.

General Dynamics made the disclosure following the disclosure in the New York Times that government agencies and one Congressional committee were investigating whether Burmah had illegally committed for backing for the ships. The disclosure triggered a flurry of sell orders yesterday for General Dynamics on the New York Stock Exchange. Because of the intense trading, the stock closed Wednesday down 1 1/2 points.

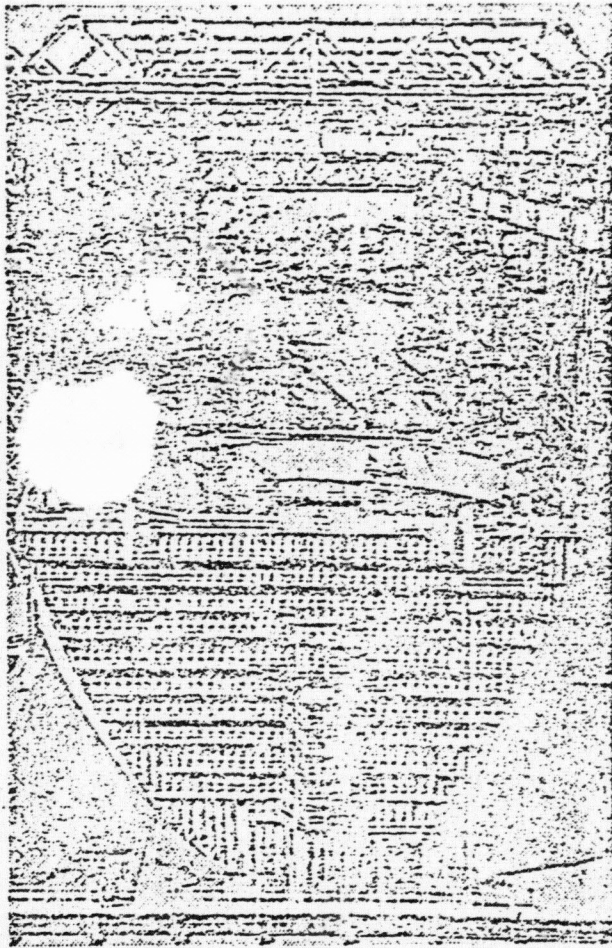
Shares Selling in London

Burmah shares were hit by selling on the London Exchange, where they are equivalent of about 11 or 15 percent, to about 1/2 each. American deposit receipts for the shares, are traded over the counter, dropped 1/2 to 9/16.

In the meantime, Representative Aspin, the Wisconsin Democrat, asked Attorney General Edward H. Levi to open investigation into whether Burmah had been committed in connection with Burmah's applications for Government contracts.

A spokesman said Mr. Aspin would ask for reports on the case from the Federal Maritime Administration and the Securities and Exchange Commission, which are looking into the status of the shipbuilding contracts and the Government guarantees.

The issue is whether Burmah, a foreign company, had any right to apply for shipbuilding contracts or subsidies from the Maritime Administration. The benefits are restricted by Federal law to American corporations and individuals. General Dynamics is building huge liquefied natural gas tankers for Burmah at its Quincy



A tanker for liquefied natural gas during construction in the General Dynamics yard in Quincy, Mass.

Mass., shipyards. The contracts from Burmah are worth slightly more than \$1 billion. Three of the ships have already received the so-called Title XI guarantees from the Government.

The applications for these benefits were made through several corporations established in the United States by Burmah for the express purpose of attempting to comply with the American citizenship requirement of the Federal law.

A legal memorandum prepared by a Washington law firm for Burmah Oil Tankers, an American Burmah subsidiary, states flatly that the efforts of corporate citizenship of at least five of the Burmah-related companies that filed the

Title XI applications "were fraudulent."

The memorandum, a copy of which was obtained by The Times, cites Federal laws and court precedents stipulating that fraudulent applications for Title XI guarantees are punishable by forfeiture of the vessels to the Government.

The Government guarantees are crucial to the entire project. Without them, the project could not proceed, because financing would not be available.

In a statement responding to The Times article yesterday, David S. Lewis, chairman of General Dynamics, noted that certain revisions were being made in a natural gas transporter.

Continued on Page D11

(See attached)

General Dynamics Asserts That Competitors Conspire

Continued From Page D1

ization agreement involving Burmah and five of the ships under construction.

"When the agreement is completed, the final documentation will be submitted to the United States Maritime Administration for its approval," he said. "We are confident that the presently proposed organization arrangements meet all of the requirements of the United States law."

Subject of Memorandum

Mr. Lewis did not address himself to the earlier applications for Title XI guarantees made by Burmah-related companies that were the subject of the legal memorandum prepared by the Washington law firm, Kurrus & Jacobi.

In response to those applications, the Maritime Administration issued a formal commitment to the Burmah-related companies for Government guarantees. The corporate structures under which the ships are being built are now being substantially changed, according to both Burmah and General Dynamics.

Another confidential memorandum prepared by Richard W. Kurrus, of the Washington firm, asserts that court precedent "makes clear that once there has been a violation of

the United States citizenship requirements of Section 2 of the Shipping Act, that violation can not be subsequently cured by the transfer of the vessel or the interest involved to a bona fide United States citizen corporation."

"Violation of the Law"

In the same memorandum, Mr. Kurrus says: "There is no question in my mind that both the Easco and Cherokee deals are in violation of the law." Five Cherokee companies and three Easco companies are the corporate entities set up by Burmah for the eight shipbuilding projects.

Mr. Kurrus continues: "We can get no real help in this situation from any Marad approvals. The courts have held that Marad is not empowered to authorize a violation of the Shipping Act. Furthermore, I am sure that Marad would deny knowledge of some of the critical facts which relate to this control issue." Marad is short for Maritime Administration.

Representative Aspin, in his letter yesterday to Attorney General Levi, suggested that the existence of a memorandum of law from the Washington law firm to Burmah "constitutes prima facie evidence that some parties may be involved in an effort to obtain Title XI guarantees through fraud."

Inreading a tricky course with LNG tankers

A-165

General Dynamics' gamble gets riskier because of Burmah Oil's troubles

Cheers went up at General Dynamics Corp.'s Quincy (Mass.) shipyard back in 1973 when GD won a \$433 million contract to build five large liquefied natural gas tankers for Britain's Burmah Oil Co. The U.S. nonmilitary shipbuilding business was in the doldrums, and the contract meant that the Quincy shipyard, which the company had purchased from Bethlehem Steel Co. as its entrée into the building of nonmilitary surface ships, would not have to be closed for lack of work.

At the time, there was nothing to indicate that the LNG ship contract with Burmah would lead the big St. Louis defense contractor into financial and legal gales, let alone force it to offer to take an equity interest in some of the ships to insure their completion. But that is just what has happened.

Thanks to escalating labor costs, profits on those five Burmah tankers have evaporated. Unconfirmed reports persist that tough technical problems, not yet solved, may further boost costs and delay delivery. And Burmah, which has made \$133 million in payments on the ships, has itself been driven onto financial shoals. It has warned GD that it will not be able to meet further construction costs, which have been running \$7 million per month.

And just last week, as it was trying to work out other financing arrangements, GD was hit by two other blows—both major newspaper stories. One reported that the House Government Operations Committee was investigating the possibility of irregularities in Burmah's application to the U.S. Maritime Administration for aid in financing the LNG tankers being built by General Dynamics. The other reported that the Securities & Exchange Commission might look into the possibility that four of GD's top officers, including David S. Lewis Jr., who is chairman, president, and chief executive officer, had sold big blocks of stock based on inside information on the poor financial prospects of the Quincy shipyard.

Unfair tactics. General Dynamics makes no bones about the fact that its LNG tanker business—up to a point—has been a big disappointment. The five Burmah tankers, as well as three earlier ones ordered by Escogas LNG Inc. for an Algeria-to-U.S. run, are being

built under fixed-price contracts. "We had protection in the [Burmah] contract for the inflation we encountered in steel, aluminum, and engines," says Colonel Henry Crown, GD's major stockholder and a company director. "But we were uncovered in labor." GD has had to absorb about \$35 million in unexpected costs on the first eight ships and, at best, the company admits, it will break even on them.

But the Quincy yard also has much more favorable contracts to build four more of the vessels, on which it expects to make solid profits. It is sanguine about prospects for resolving Burmah's difficulties. And on the allegations of improprieties leveled against both Burmah and GD, Crown, Lewis, and other company spokesmen are crying "foul."

The charge of irregularities on Burmah's part is related to that company's need to obtain federal loan guarantees. Such guarantees are part of the Maritime Administration's program for encouraging U.S. shipbuilding and are intended to protect the financial institutions that will ultimately put up the money to buy the LNG tankers and lease them to Burmah. The charge is that the guarantees have already been made even though Burmah has not submitted a proper proposal.

No agreement. The proposal, in fact, has not been submitted, and what is holding it up is the lack of a definitive agreement between Burmah and its customers. Burmah intends to use the tankers to haul LNG from Indonesia to Japan, and rising costs have forced it to renegotiate its original agreement with the Japanese users and with Pertamina, Indonesia's state-owned oil and gas company. Those complex and time-consuming negotiations are supposed to be completed by Aug. 31.

Meanwhile, GD's Lewis insists that the charge of an illegal federal commitment is false, and he is backed by Howard F. Casey, deputy Maritime administrator. The agency has made only a "conditional commitment" to grant the loan guarantees, according to Casey. Lewis says that the stories of improper dealing originated with foreign shipbuilders and LNG tanker owners, who would like to see the GD program halted and the Burmah contract with Pertamina and Japan broken. There are, Lewis points out, plenty of LNG tankers now lying idle.

Crown's reply. Those same motives could lie behind allegations of irregular insider stock trading by GD officials. This week the SEC was deciding whether to



Building an aluminum sphere (above) in Charleston, S. C., to hold LNG: The first tanker (right) has been waiting for it at Quincy since February.

launch an official investigation of the charges. If it does, says Crown, it is in for a surprise. According to Crown, Lewis did sell 100,000 shares of GD stock last Dec. 19. But 80,000 of those shares were sold to Crown's own family, and the other 20,000 were bought by two other GD board members, Robert W. Reneker and Albert E. Jenner, Jr. "You can see how ridiculous this charge is," says Crown.

In explaining why Lewis sold the stock, Crown sheds a bit more light on how he induced Lewis to leave the presidency of McDonnell Douglas Corp. back in 1970 to take over at GD. Part of the lure was five-year stock options for 100,000 shares of common at the then-market price of \$21. Says Crown: "I told him that if he didn't think he could become a millionaire on those options not to take the job."

Lewis' options were to expire last year, and he had to borrow money from a bank to buy his stock at the option price. He then sold the stock at the market price of \$33.50 a share, making well over \$1 million before taxes. But, Crown points out, as further proof that GD's chairman was not worried about the company's future, Lewis then

at back 15,000 shares on the open market.

Burmah's contract. Crown and Lewis are confident that the current negotiations of improprieties will blow away. But a less tractable problem is the fact that the major customer so far for the Quincy yard's LNG tankers is Burmah. And Burmah is a company in deep trouble.

Part of the trouble is Burmah's contract with Pertamina and Japan. Originally signed in 1973, the contract calls for Burmah to haul 7.5 million tons of LNG over a 20-year span. Armed with that contract, Burmah made the deal with GD to build the five tankers. To qualify for U.S. government cargo insurance under Title XI of the Shipping Act of 1916, it created a

On top of that, Burmah's bargaining position is weak. Other carriers would be glad to have the Japan-Pertamina LNG run. And Burmah itself has barely survived last year's oil tanker glut. Its ship charter business lost \$56.6 million last year, and the company had to be bailed out by the Bank of England. In the process, Burmah had to divest itself of \$1.4 billion worth of its properties. It is still heavily in debt. And if it cannot make its tanker operations profitable within two years, it could be forced out of the charter business.

GD's major response to Burmah's financial straits has been to offer to put some of its own money into the tankers. There is precedent: The two Quincy LNG tankers on order that are not destined for Easogas and Burmah are

poles. Welding them together requires great precision. There must be no defects because at the temperature of LNG—260°F—any residual stress could lead to failure.

Crown himself insisted that GD go outside for the spheres, to spread the company's risk on the program. Originally GD turned to Pittsburgh-Des Moines Steel Co., awarding it a \$40 million contract for the first 15 spheres. PDM picked a site in Charleston, S.C., and started production in early 1974.

From then on the relationship deteriorated. PDM was making "zero progress month after month" getting the first sphere built, claims Peter J. Gwyn, assistant general manager of GD's Quincy Shipbuilding Div. One big reason: PDM was trying to weld the spheres in the open air, and it rained too much. According to Gwyn, PDM did nothing to solve the problem.

A PDM spokesman disagrees. "We reached an impasse," he admits, "but the delays were caused by General Dynamics with contract changes."

GD's Crown and Lewis explain insider trading and the Burmah deal

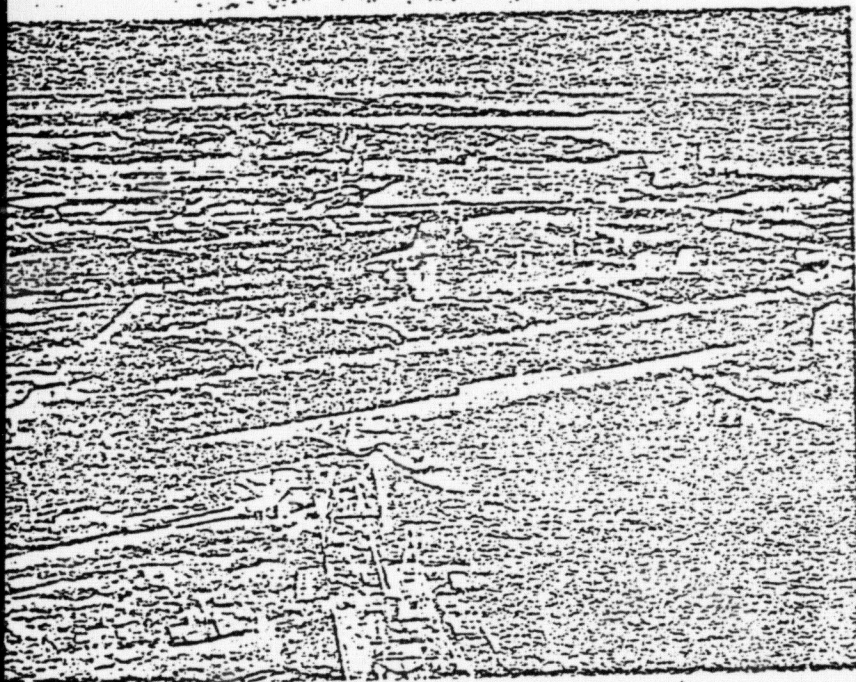
In the end GD took over the job itself—it had already paid \$20 million to build the plant—and pumped an additional \$69 million into it, bringing the welding under cover.

Still, the first sphere, now scheduled to leave Charleston by barge on Nov. 28, will reach Quincy more than a year late. The first ship has been in the water, ready to receive it, since February. And though the remaining spheres should follow at the rate of one a month, that assumes that manufacturing, plus installation and checkout, will go off without a hitch.

If not, GD has a backup plan for Burmah. The Algerian liquefaction facility that will supply the Easogas tankers for their U.S. run is even further behind its construction schedule than the Indonesian plants. It might be possible to use the first Easogas tankers on the Indonesian run and pick up time for beleaguered Burmah.

Despite all of the obstacles it has encountered, GD remains bullish about its LNG ship venture. It expects to expand its list of a dozen firm orders. And while the initial Burmah vessels were sold at prices ranging from \$94 million to \$93 million, the more recent orders have been written at prices ranging up to \$150 million.

"I was not enthusiastic about taking the LNG orders," concedes Crown. But Lewis, who last spring called his company's shipbuilding profits a "pitiful performance," now says confidently: "We will make a fair profit on our LNG ships, starting with No. 9."



st consisting of five Delaware-based companies, each to own one of the ships. The companies were to line up institutional investors to finance the ships, which would then be U.S.-owned—a prerequisite to a federal guarantee of 87½% of a new ship's construction cost. Then Burmah would charter the ships and make its hauling contracts pay off.

In 1973, though, such investors were hard to find. In addition, shipbuilding costs began to soar, and Burmah saw that it would have to go back to its protective customers and try to boost the freight rates. Those negotiations have been difficult. One reason is that Japan, which shared with Pertamina the cost of liquefaction plants being built in Indonesia, had already been obliged to post its original \$1 billion investment another 37% to keep the project from collapsing. It was in no mood for other contract concessions.

being built for a consortium that includes GD itself; the other two members are Moore McCormick Bulk Transport Inc. and Panhandle Eastern Pipe Line Co. However, the Japanese are concerned about the prospect of GD equity in the Burmah tankers because they fear that GD may have the muscle to demand increased freight rates that Burmah itself could not make stick.

A matter of spheres. Along with depending on a shaky customer, GD's venture into LNG ships has had to contend with the consequences of a major internal decision having to do with construction of the LNG carriers. Each tanker will carry its LNG in five huge aluminum spheres. The spheres measure 120 ft. across and weigh 850 tons each, and they are mounted in gigantic holes in the deck. Building such spheres is a problem: The plates of which they are made are 6 in. thick near the equatorial belt and taper to about 2 in. at the

NEW YORK TIMES
AUGUST 24, 1976

Dynamics Denies Aides Sold Stock On Insiders' Data

David S. Lewis, chairman of the General Dynamics Corporation, denied yesterday that any executives of the company sold stock in the company during the last eight months on the basis of inside information that problems existed in a tanker construction program.

Referring to a story in The New York Times last Thursday disclosing that the Securities and Exchange Commission was looking into trading in General Dynamics shares by company officials, Mr. Lewis said in a statement that "two key members of the S.E.C. staff advised General Dynamics that they had no knowledge that the S.E.C. was examining trading in G.D. stock."

A staff member of the S.E.C., when asked yesterday about Mr. Lewis's statement, said: "We have already said that we were aware of the transactions and were making preliminary inquiries." The staff member declined to comment on whether any other S.E.C. staff members had informed General Dynamics to the contrary.

Mr. Lewis referred in his statement to the sales of General Dynamics shares by four executives and said:

"The facts are that, in all four cases, the stock owned by the executives had been acquired on the exercise of stock options awarded to those executives primarily in connection with their employment by General Dynamics long before the exercises.

"In order to finance the purchases of the stock each of the executives was required to borrow substantial sums of money. The stock sales were made after the required holding period to enable the executives to pay off the loans and applicable income taxes resulting from the transactions."

The statement continued: "Furthermore, approximately 85 percent of the stock involved was sold to other directors of the corporation who are and were as fully informed on all aspects of the activities of the company as the executives who sold. Under no circumstances could these sales involve any misuse of insider information."

MAINICHI DAILY NEWS Tokyo

August 22, 1976



TS 8.22

NAGAI PRESSING, INC. 2-1

General Dynamics Denies Fraud

QUINCY, Mass. (UPI) — General Dynamics Corp. Friday denied fraud was used in seeking federal loans to guarantee the building of eight large tanker ships for Burmah Oil Co. of Britain.

General Dynamics chairman David S. Lewis also denied a

report in the New York Times that the Securities and Exchange Commission, the U.S. maritime administration and a congressional committee were investigating whether Burmah oil obtained the loans for the ship construction illegally.

The Times had said hundreds of million of dollars in ship-building projects and thousands of jobs might be threatened "because of the possibility of fraud in applying for government backing, which is illegal for foreign companies."

But Lewis said fraud was not used to obtain illegal subsidies in the \$1 billion project, and the ships will be owned by U.S. concerns and only chartered to Burmah.

U.S. law restricts guarantees or subsidies from the maritime administration to American corporations.

General Dynamics, owner of the Quincy shipyards, is building the ships to carry liquefied natural gas between Indonesia and Japan. Three have been delivered and five are still under construction, the Times said.

August 22, 1976

TO 8.22



US Ship Firm Hits Outside Pressure

NEW YORK (UPI) — General Dynamics charged Friday that its competitors have been subjected to financial pressure in an attempt to overturn the firm's billion dollar shipbuilding project for Burmah Oil Company of Britain, the New York Times said Friday.

General Dynamics said in a statement that competitors which the firm did not identify were "under desperate pressure from financial and other sources" to nullify the contract, the Times said.

The response by General Dynamics came amid reports that the Securities and Exchange Commission and the Federal Maritime Administration were investigating whether Burmah had illegally obtained the commitments of U.S. bidders for the ships.

U.S. Atty. Gen. Edward H. Levi has also asked Rep. Les Aspin, D-Wis., to begin an investigation.

General Dynamics is building eight giant liquefied gas carriers at Quincy, Mass., for Burmah under a contract from Burmah of more than \$1 billion. Three ships have been received under U.S. guarantees of subsidies.

U.S. law restricts guarantees or subsidies from the Maritime Administration to American corporations.

The reports of the contract sparked such a heavy stream of sell orders of General Dynamics shares in New York that trading of the stock was suspended with the stock last price at \$54.

British Firm Bribed Japanese Over Ships

A-170

New York (By Yomiuri Correspondent Kunio Sagara) — Court testimony in New York revealed Monday that high shipping officials in Japan received ¥900 million in bribes from the Burmah Oil Company, a major oil firm in Britain.

The bribery was disclosed during hearings in litigation between the Burmah Oil Company and its subsidiary company Burmah Oil Tankers Company.

Some executives of the General Dynamics Corporation, which has a contract to build tankers for the Burmah Oil Company, are now in Tokyo conducting negotiations with the Japanese Government on charter contracts and negotiating loans from the Export-Import Bank of Japan.

Following disclosure of the alleged bribery, many people in New York wonder why the Japanese Government and business leaders are so eager to use foreign tankers, whose cost will be much higher than Japan's own tankers.

The tankers to be chartered will be used to import liquefied natural gas (LNG) from Pertamina, Indonesia's national oil export agency, to Japan.

The US Securities and Exchange Commission (SEC), the US Government and the US Congress are conducting secret investigations into the alleged illegal business transactions by the Burmah Oil Company.

Monday's disclosure in the court testimony indicated that the allegation would most likely develop into another corruption case involving Japan.

Stanley Wilson, president of the Burmah Oil Tankers Company, and A. F. Down, chairman of the Burmah Oil Company, said in court that Down paid \$3,000,000 to high shipping officials in Japan through a company in Bermuda. It is not immediately known if "officials" indicates more than two government officials in Japan.

Informed sources said, however, that it was certain that more than two government officials were involved in the alleged cor-

ruption.

According to the testimony by Down and Wilson, \$2,000,000 of the money was paid in cash and the remaining \$1,000,000 in promissory notes through "Fontas" company in Bermuda. It is believed that some influential Korean lobbyists in Washington are behind the "Fontas" company.

It was also disclosed Monday in New York that a "dummy" company Edna Company in Hong Kong, along with the Far East Oil Trading Company, paid money along similar routes through Robin Rowe, a former ship's captain who had previously worked with Pertamina.

THE DAILY YOMIURI

Aug. 24 (Wed.) '76

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LNG Importers Are Worried Over Report

Japanese buyers of liquefied natural gas (LNG) are worried over a New York Times report Thursday that Surmah Oil Co. may have bribed Indonesian Government officials in connection with the construction of tankers to carry LNG to Japan.

Their worries stem from the possibility that planned shipments to Japan of Indonesian LNG will be disrupted if the suspected bribery case delays construction of the tankers.

Major Japanese users who would be affected by such an event include Nippon Steel Corp. and Kansai Electric Power Co.

Some people here observe that it might develop into what they termed "another Lockheed affair," a bribery case possibly involving Japanese over the supply of Indonesian LNG to Japan.

According to Japanese sources, the tankers being built in the United States for Indonesia by a British-based company are intended to transport Indonesian LNG to Japan, beginning next spring.

Under a Japan-Indonesia agreement signed in April 1973, Indonesia's Pertamina will supply Japan with 7.5 million tons of LNG a year, starting in 1977.

In the deal, Japan agreed to extend loans totaling 5000 million to Indonesia for the development and construction of LNG facilities.

The loans are to be repaid over 25 years including an initial grace period of seven years.

The agreement was concluded when Kakuei Tanaka, who has been indicted on a bribery charge in the Lockheed payoff case, was Prime Minister and Yasuhiro Nakasone, Liberal-Democratic Party secretary general, was International Trade and Industry Minister.

There was growing demand

in Japan for LNG at that time as a low-pollution energy source and also as an alternative source of energy other than oil.

The Government therefore decided to import LNG from Indonesia, undertaking a national project. Kansai Electric Power, Nippon Steel, Chubu Electric Power, Kyushu Electric Power and Osaka Gas also announced plans to buy LNG from Indonesia.

The relatively high price of Indonesian LNG set under the agreement gave rise to suspicion that its pricing may have been based on some shady deal.

The price of Indonesian LNG is set at \$2.70 compared with the going price of about \$2 per 1 million BTU for LNG from Brunei and Alaska.

The agreement price was set at the time of signing the pact before determining the cost of production, according to some LNG users here.

There are rumors that some Japanese received kickbacks from Indonesia in connection with the Japanese loans. The Japan Socialist Party indicated that it will take up this matter in the Diet.

YOMIURI - August 19, 1976
(evening edition)

SECOND LOCKHEED SCANDAL ON INDONESIAN LNG IMPORT?
U.S. SEC STARTED INVESTIGATION ON THE FICTITIOUS
COMPANIES INCLUDING FAR EAST TRADING COMPANY.

(New York, August 18)

It was revealed August 18 in New York that there exist some unlawful "runnel" companies which get profit from the big LNG import project between Japan and Indonesia, and the the U.S. SEC (Securities & Exchange Commission), U.S. House of Representative Government Operations Committee and U.S. GAO just started investigation.

Among these companies is included Far East Oil Trading Company in Tokyo which has many Japanese political or business leaders as promoters, so it seems inevitable that this revelation will cause another sensation in Japan.

Japan plans to use seven LNG transportation ships which British Bammah Oil Company ordered from U.S. General Dynamics Company.

U. S. Maritime Administration (one of offices under Ministry of Commerce): according to the shipbuilding guarantee financing system, plans to make financing guarantee

\$475 million for first 3 ships and also
\$310 million for other 2 ships.

These transportation ships will be chartered to the Indonesian National Oil Company, "Pertamina", through "Burmast East Shipping Company", a subsidiary company of Burmah Company and they are expected to earn enormous profits.

Profits will be under control of Burmast East Company. It has to publish its stock composition according to U.S. securities law, but only 57.5% of the shares are known to be in the possession of Burmah Oil Tanker Company, and the remaining 42.5% is secret.

Investigation up to now revealed that among the other remaining holding companies are Far East Trading Company (5%), EDNA Company (20%), Overseas National Gas Transportation Company in U.S. (10%) -- but, other 7.5% is still unknown.

The owners of both EDNA Company and Overseas Company are unknown. If this guaranteed financing system and financing by Export Import Bank is cancelled, Japan will have to find alternative transportation.

There is a question why Japan utilizes this relatively expensive transportation combined with a fictitious company when it can utilize its own, West German or French cheap transportation.

On June 17 at the meeting with Mr. Radjoso, Indonesian Minister of Commerce, Mr. Komoto agreed to give a loan of \$372 million, in addition to the initial \$1.1 billion to the Indonesian Government.

This additional loan will be financed by 3 big electric companies (Kansai, Shikoku, Kyushu), Osaka Gas, Nippon Steel and 16 city banks including the Japan Export Import Bank.

There are some people who point out bribery by "Pertamina" combined with Japanese political or business leaders.

(Note)

Far East Oil Trading Company was founded in May, 1966, as an overseas sales company.

Funds are shared by Pertamina and the Japanese side. Japanese stockholders are 20 companies including Far East Oil Development Int.

Capital is \$1.6 million.

Main office is 18th Mori Building, 29 Akafuchicho, Shibuya-ku, Minato-ku, Tokyo.

The president is Mr. Sumio.

YOMIURI - August 31, 1976
(evening edition)

JAPANESE IN INDONESIA ARE FRIGHTENED AT THE LNG
SUSPICION. AN INFLUENCE ON IMPORT PRICE?

(Jakarta, August 31)

All the Japanese people concerned working in Jakarta
are frightened at the N. Y. Times' report on the LNG suspicion.

The reasons are:

- (1) Japanese have not been informed of the relation
between Indonesian National Oil Company, "Pertamina", and U.S.
companies.
- (2) If the shipbuilding of LNG tankers turns out to be a failure,
imports to Japan will be delayed after March 1977.
- (3) Moreover, increase in the cost of tanker construction will
have a repercussion on the transportation price and then will cause
an increase in the import price.

Bribery has been an open secret in Indonesia. Former
president of "Pertamina", Mr. Sutowo, is rumored to have accumulated
assets of some hundred million dollars. Now a campaign for clearing
profit is under development.

There has long been a suspicion about the LNG development here. This development is said to be unfair to Japan because of the big difference between the import price to Japan and that to the U.S.

Problems of details, including financing, are planned to be discussed on August 24 or 25 when Mr. Sadii, Minister of Mining, visits Japan.

Japanese sides believe that there is no doubt as far as they are concerned. But, the contract and discussion between Indonesia and U.S. or European countries have not been revealed, so most of the Japanese did not know the composition of stockholders of Burmah East Shipping Inc. None of Japanese knew that one of the stockholders was Mr. Robin Lowe in Singapore, the owner of EDNA Company and a right hand of Mr. Sutomo.

It has turned out that Japan finances the funds to buy the product but has nothing to do with construction and tanker construction.

It is worried that the delay in tanker construction caused by U.S. investigation will leave Japanese facilities unutilized.

Moreover, if the construction cost of U.S. tankers increases, Pertamina is expected to demand an increase in the transportation rate.

In that case, Japan will suffer from the CIF (cost, insurance & freight) contract in comparison with the U.S. FOB (free on board) contract.

Considering the repercussion on the increase in utilities prices in Japan, the Japanese concerned wish the import price on the same level as U.S.

General Dynamics Inc. Denies Unlawfulness

(Quincy, August 20)

General Dynamics Inc. asserted that there was no unlawfulness on the financing problem of tanker construction.

British Burmah Oil Inc. ordered these tankers to transport LNG from Indonesia to Japan.

YOMIURI - August 25, 1976

CHAIRMAN OF BURMAH COMPANY TESTIFIED \$3 MILLION
BRIBE TO "HIGH SHIPPING OFFICIAL IN JAPAN" ON LNG SHIPPING

(New York, August 23)

It was revealed August 23 in New York that "high shipping official in Japan" had received \$3 million bribe from Mr. Alastair Down, Chairman of British Burmah Oil Inc.

Now in Tokyo, executives of Burmah Oil and U.S. General Dynamics Inc. are negotiating with Japanese government on the tanker chartering and loan problem.

But in New York, doubt is spreading why Japanese government and business leaders contribute to the high cost foreign tanker transportation.

On unlawful activities of Burmah Oil Inc., U.S. government, committees of U.S. Congress including U.S. SEC are continuing investigation, but LNG import case proved to develop itself to another shipping scandal.

The bribery was revealed at the court testimony in N.Y. Court of Arbitration on the dispute between Burmah Oil Inc. and Mr. John

McMullen, former president of Burmah Oil Tankers.

Both Mr. Stanley Wilson, President of Burmah Oil Tankers and Mr. Down, Chairman of Burmah Oil Inc., testified at the court that Mr. Down paid \$3 million to a "high shipping official in Japan" through "Fontas Inc." in Bermuda.

Official could be single or plural, but chances are it is plural. It is not yet revealed that "high shipping official" means government official or business leader in shipping industry.

According to their testimony, \$3 million of it was paid with cash, other \$1 million with promissory note.

"Fontas Inc." is said a fictitious company backed up by some powerful Korean who is active as lobbyist in Washington.

Burmah Oil Inc. is now negotiating with MITI and business leaders in shipping industry on additional loan from Japan Export Import Bank and obtaining contract on tanker charter.

Cautious opinion began to appear in Japanese government.

It is also revealed on August 23 that "EDNA Inc." (in Hong Kong) which has been, together with Far East Trading Company, the object of investigation by U.S.SEC, provides fund on another route through Mr. Bohin Lowe who was working in "Pertamin".

It is observed that EDNA Inc. involved in bribery case in Japan.

Influence on Import Price

Japanese government is negotiating with Burmese East Shipping Inc. and executives of Pertamina in addition to Burmah Inc. and General Dynamics Inc.

The subjects of negotiation are considered:

(1) the condition of the additional loan of \$360 million which has been determined:

(2) the transportation rate of LNG from Indonesia to Japan.

On the transportation rate, each construction cost of last two ships increased from \$100 million (original anticipated) to \$150 million, so they demand the increase in transportation rate.

LNG Import Price is considered \$2.70 per 1 million BTU or \$16.20 per 1 barrel.

If the rate is increased, the import price will increase much more.

Government Denied

Japanese government denied the report that the bribe was paid to "high shipping official in Japan" because of obscure evidence.

A-181

Headline: KICK-BACK TO TOTAL 30 BILLION YEN/REFERRED TO
IN LITIGATION DOCUMENTS RE LNG TANKER DOUBTS

By correspondent Sagara

NEW YORK, August 30, 1976 -- It came to light recently that the Tokyo-based Far East Oil Trading was one of the dummy operations created to secretly channel to Japanese officials illicit kick-backs from the charter of tankers to transport Indonesian LNG to Japan. Furthermore, the kick-back represents an enormous amount, totaling U.S. \$100 million (30 billion yen), according to legal documents obtained today. President S. Ito Azuma said in Tokyo that the shares that were entitled to the kick-back have been sold out, but it is still enigmatic who bought these shares, which may bear gigantic interest, or how much they were sold for.

Tankers of "Japan, the shipbuilding country" won't be used in transporting the LNG which Japan will purchase from Indonesia, and it has been decided that costlier foreign vessels will be used. Barmah Oil of U.K., which has close relations with Indonesia's Pertamina, placed orders with General Dynamics to build seven tankers which are under construction in the United States.

In using the LNG tankers, Japan will pay huge charterage fees, and Barmah East Shipping Company, a Barmah Oil subsidiary, will be a "window" to receive the charterage. The system is said to work so that Barmah Oil Tankers, a legal entity and another subsidiary of Barmah Oil, will receive 57.5% of the charterage, but the remaining 42.5% will be distributed through the dummy corporation.

Yomiuri this evening reported in a major front page article that kickbacks totaling 30 billion yen (100 million U.S. dollars) have been involved in the Tokyo-based Far East oil trading, one of the dummy corporations set up to pass the illegal kickbacks to Japanese officials, according to legal documents obtained recently.

Far East oil trading president Azuma said in Tokyo, according to Yomiuri, said its shares have been sold off. But it is not known who now hold the shares, said Yomiuri.

Yomiuri said that the information is based on Burmah oil legal documents for litigation that Yomiuri obtained yesterday. In a dispatch from New York by its correspondent Sagara, Yomiuri said that kickbacks of 1.5 billion yen were to be paid annually for 20 years through Far East oil trading.

In a side bar from New York, Yomiuri also reported that the latest issue of the Business Week magazine referred to the LNG case.

fifty shares (5%) from Daimaru East Shipping Company in order to receive

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kick-back in accordance with an agreement on November 3, 1973. This

agreement is said to be valid for twenty years starting from next year, when

Japan starts importing LNG from Indonesia. Another legal document said

that the LNG tanker charterage will total \$100 million. Far East Oil Trading

will receive 5%, or \$5 million (3.5 billion yen) for twenty years, for a

total of \$100 million.

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LNG Importers Are Worried Over Report

Japanese buyers of liquefied natural gas (LNG) are worried over a New York Times report Thursday that Sunbath Oil Co. may have bribed Indonesian Government officials in connection with the construction of tankers to carry LNG to Japan.

Their worries stem from the possibility that planned shipments to Japan of Indonesian LNG will be disrupted if the suspected bribery case delays construction of the tankers.

Major Japanese users who would be affected by such an event include Nippon Steel Corp. and Kansai Electric Power Co.

Some people here observe that it might develop into what they termed "another Lockheed affair," a bribery case possibly involving Japanese over the supply of Indonesian LNG to Japan.

According to Japanese sources, the tankers being built in the United States for Indonesia by a British-based company are intended to transport Indonesian LNG to Japan, beginning next spring.

Under a Japan-Indonesia agreement signed in April 1973, Indonesia's Pertamina will supply Japan with 7.5 million tons of LNG a year, starting in 1977.

In the deal, Japan agreed to extend loans totaling 300 million to Indonesia for the development and construction of LNG facilities.

The loans are to be repaid over 25 years including an initial grace period of seven years.

The agreement was concluded when Kakuei Tanaka, who has been indicted on a bribery charge in the Lockheed payoff case, was Prime Minister and Yasuhiro Nakasone, Liberal-Democratic Party secretary general, was International Trade and Industry Minister.

There was growing demand

in Japan for LNG at that time as a low-pollution energy source and also as an alternative source of energy other than oil.

The Government therefore decided to import LNG from Indonesia, undertaking a national project. Kansai Electric Power, Nippon Steel, Chubu Electric Power, Kyushu Electric Power and Osaka Gas also announced plans to buy LNG from Indonesia.

The relatively high price of Indonesian LNG set under the agreement gave rise to suspicion that its pricing may have been based on some shady deal.

The price of Indonesian LNG is set at \$2.70 compared with the going price of about \$2 per 1 million BTU for LNG from Brunei and Alaska.

The agreement price was set at the time of signing the pact before determining the cost of production, according to some LNG users here.

There are rumors that some Japanese received kickbacks from Indonesia in connection with the Japanese loans. The Japan Socialist Party indicated that it will take up this matter in the Diet.

BEST COPY AVAILABLE

Yomiuri Shimbun (Tokyo a.m. ed.)

August 25, 1976

MITI: Japanese Have Nothing to Do
With LNG Doubts

The Ministry of International Trade and Industry (MITI) made public on August 24 its views that the doubts concerning the chartering of the LNG vessels which is under investigation by the United States Securities and Exchange Commission in regard to the Indonesian LNG import project seem to have no direct bearing with the Japanese side.

Additional Japanese loans of \$270 million, including the Japanese Exim Bank loans for the LNG project, are aimed at LNG facilities on the ground and at improving the basic setup and not at the construction or chartering of the LNG ships, according to the ministry. The MITI spokesmen also said that the additional loans by the Japanese would not be connected to the doubts surrounding the LNG ships.

Roundup

Area: Richmond Corp. Sale Set

Continental Group, Inc., and Richmond Corp. announced yesterday they had agreed on a tax-free acquisition of Richmond by Continental through a stock exchange. Each share of Richmond common stock would be traded for 0.4 shares of Continental common stock, plus 0.45 shares of a new issue of Continental \$2 cumulative preferred stock, with a liquidating value of \$25.

Each preferred share of Rich-

mond would be swapped for 1.74 shares of Continental preferred stock.

Richmond would continue at its present location, with its present management under the agreement, which is subject to approval by both boards and the receipt of favorable tax rulings.

The Federal National Mortgage Association yesterday announced that it had agreed to buy \$900 mil-

lion in conventional home mortgage loans from the Government National Mortgage Association. The average yield on the mortgages to Fannie Mae will be 9.12 per cent.

National Bank of Washington has declared a regular quarterly dividend of 55 cents a share payable Oct. 1 to stockholders of record Sept. 10.

Nation: SEC to Look at Burmah Oil Case

The Securities and Exchange Commission yesterday said it will make preliminary inquiries into reports in Thursday's New York Times that Burmah Oil Co. illegally claimed federal subsidies needed to pay for ship construction and failed to disclose the fact to investors.

The story also says that executives of General Dynamics Corp.—which holds a major Burmah Oil shipbuilding contract—unloaded nearly all of their General Dy-

namics stock, presumably because of Burmah Oil's difficulties.

Burmah Oil yesterday categorically denied that any fraud was or is involved in applications for financing assistance from the U.S. Maritime Administration, and that government agency said it is not investigating the allegations in the newspaper article.

The nation's railroads yesterday asked the Interstate Commerce

Commission to approve a series of higher freight rates—averaging 4 per cent in the West and about 1 per cent in the East and South—effective Sept. 20.

In an earlier round of eastern and southern freight rate hikes, western railroads did not participate because some lines feared a decline in business. The ICC petition said overall rate boosts in 1976 to date would remain less than cost increases over the same period if the new rates are approved.

World: Venezuela Backing Oil Price Rise

Venezuela, a key supplier of U.S. fuel oil imports, is pressing for a hike in world oil prices in 1977, but is basing next year's national budget on 1976 oil price levels.

Mines Minister Valentin Hernandez this week said that a "significant increase" in oil prices by the Organization of Petroleum Exporting Countries was "inevitable" in 1977.

Finance Minister Hector Hurtado, however, yesterday said that oil revenues for 1977 are being calculated for next year's budget at the same level as this year—around \$5.7 billion.

Venezuela was among the OPEC members that pressed for a price hike during the last ministerial-level meeting of the oil cartel in Bali at the end of May. The effort was unsuccessful due to the oppo-

sition of Saudi Arabia, largest producer among the 13 OPEC members.

Britain's automobile companies produced 90,684 automobiles in the four weeks ending July 24, a 27 per cent increase over July 1975, the Industry Department said yesterday.

From Staff Reports and News Dispatches

The Economy

Saturday, August 21 Boston Globe

Competitors behind tanker story, sources SAY

By J. Langner
Globe Staff

Competing shipping interests were behind allegations that Burmah Oil Co., a British firm, had acted fraudulently in seeking Federal mortgage loan guarantees for five liquefied natural gas (LNG) carriers that are to be built at the General Dynamics shipyard in Quincy, well-placed government sources said yesterday.

These allegations have been made periodically during the last year, according to several sources, and were published Thursday by the New York Times. The Times said the Securities and Exchange Commission, the Maritime Administration, and a congressional committee were investigating possible illegal Federal loan guarantees and construction subsidies.

One well-placed source said yesterday: "I can tell you that the losers in the Indonesian deal have been calling the papers, telling them to ask about Burmah for a long time. I guess they finally went to the Times."

The "Indonesian deal" was a contract landed by Burmah to ship LNG from the gas fields in Sumatra and Borneo to five utility companies in Japan. Sources told The Globe there are nine LNG carriers idle now across the world and this is proving costly to the owners.

General Dynamics Chairman David S. Lewis alluded to this situa-

tion in a statement released Thursday in which he said competing interests were under great financial pressure to find cargoes for their carriers. He denied any impropriety on the part of his company, and similar denials were issued by Burmah and by the Maritime Administration (Marad).

Sam Nemecrow, counsel for Marad, said yesterday that no evidence had been found to suggest fraud on the part of Burmah or its subsidiaries. He said Marad looked into the matter before the Times story appeared because there had been inquiries made during "at least part of the past year."

One of the inquiries was made by Rep. Les Aspin (D-Wis.), who asked for information about Burmah's role in the applying for loan guarantees, and who, not satisfied with Marad's reply, asked the Government Operations Committee to look into the matter.

Aspin said he also is asking Attorney General Edward H. Levi to open an investigation. Levi's office said yesterday afternoon the request had not been received yet.

Reliable sources said Aspin also had been approached by the losing shipping interests, who suggested the Burmah case ought to be investigated.

Aspin has suggested Burmah may have acted fraudulently in obtaining Federal mortgage loan guarantees under Title XI of the Merchant Marine Act of 1936. Under that provision, a

shipbuilder who is an American citizen may have his loan guaranteed by the Federal Government up to 87.5 percent.

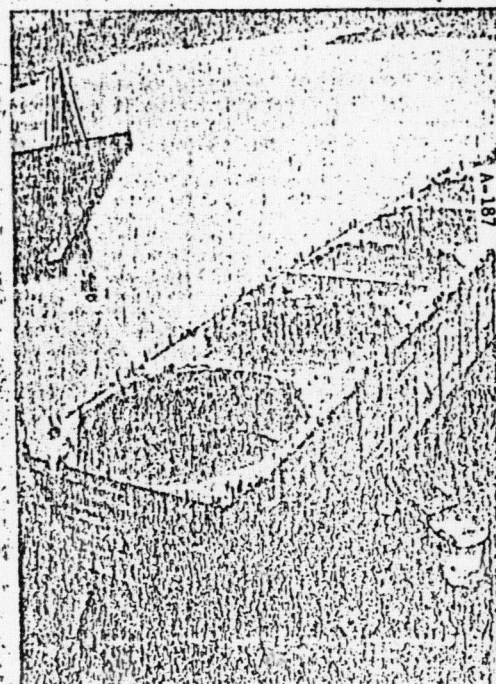
Financial experts say such guarantees are almost indispensable to secure bank loans.

Aspin questioned whether the American companies that would own the five ships, Cherokee Shipping Corp. I, II, III, IV and V, were not in fact controlled by foreign interests, namely Burmah or its subsidiary, Burmah East Shipping Co., which will do the transporting of gas from Indonesia to Japan.

Nemecrow said the practice of an American citizen building a ship and leasing it to a foreign company was common. He said that before Marad makes final commitments on loan guarantees, the officers of Cherokee would have to swear out an affidavit of citizenship.

"They have indicated they will swear out this affidavit, and I doubt they are preparing to commit perjury," Nemecrow said.

A spokesman for General Dynamics expressed dismay that the Burmah project should come under attack when it meant jobs for Americans. He noted that all ships to be built in Quincy, including three already under construction, would be American-registered, carry American crews, and be built of American materials.



LNG tanker is pushed toward fitting docks at Quincy shipyard.

Ship Shortage May Hamper LNG Movement to US

By STANLEY MANTROP
Journal of Commerce Staff

HOUSTON — Supplies of liquid petroleum gas (LPG) available for U. S. consumption are expected to rise sharply over the next 10 years, but a shortage of specialized ocean carriers to transport the fuel could seriously cripple the movement to the United States, an LPG transportation seminar was informed here.

Representatives of the shipping industry, shipbuilding and brokerage interests painted a gloomy picture of the worldwide fleets to meet the demand for additional LPG carriers by 1980, and saw a major shortage by 1985 unless the carrier deficiency was overcome by that time.

The seminar, sponsored by Helge Ringdal, Inc., Norwegian-based offshore oil, shipping and financing firm with a Houston office, was told that worldwide LPG surplus by 1985 would rise to over 50 million tons from the 1976 peak of 13.7 million tons, of which 80 per cent would come from the Middle East.

Helge Ringdal's marine and gas department vice-

president, Truls Aarsten, said it was not unrealistic to anticipate that 500,000 barrels a day of LPG would be available for import by 1979 to 1980, but that the fleet would be inadequate to handle the fuel.

"A total shipping capacity of about 5 million cubic meters will be required, and if you add all the ships of minimum 50,000 cubic meters, which is really the minimum economic size, up to the largest ones either existing or on contract, you will find they represent much less than half the anticipated demand," said Mr. Aarsten.

Mr. Aarsten's views were shared by Margaret P. Skillern, principal consultant, Purvin & Gertz, Inc., Houston-based engineering firm and transportation consultants, who told the seminar that Saudi Arabia would be the Mideast's largest LPG sources, but all of the other Mideast countries would contribute a substantial share.

"The general trend (after domestic needs have been met) indicates a surplus worldwide through 1985,"

In Time of Rising Supplies

Ship Shortage Threatens LNG Shipments to US

(Continued from Page 1)
said Mrs. Skillern. "To move into new markets, and not the traditional ones in the U. S. and Japan, LPG will have to be priced competitive with alternate fuels, such as No. 2 fuel oil.

"This does not necessarily imply a reduction in the LPG price, but could connote an increase in crude oil prices."

The director of one of the world's largest shipbuilding yards, K. J. Raawall, of Kockums A-S, of Malmö, Sweden, outlined the impact the slumping tanker charter market has had on the world's shipbuilders.

Mr. Raawall compared the worldwide shipyard activity from 1973 when all the shipyards were booked up to the present low level.

"From 1974 up to now, about 60 million tons of tankers have been canceled," he said, explaining that present order books comprise about 90 million tons dwt., corresponding to slightly more than one-year's production.

Mr. Raawall said that assuming the normal inflation is cut in half, or to 5 per cent over the two coming years, the price for delivery in 1979 will be 10 per cent higher than for delivery in 1977.

For deliveries after 1979, there are signs the shipyard situation will improve while inflation also will rise again. As a result, for delivery in 1980, shipyards to have to calculate into the prices to cover capital costs of investments half of that normal 5 per cent.

"For 1981 I have dared to calculate full capital costs and a further 10 per cent profit, and if these assumption materialize, the price in 1981 will be 50 per cent higher than for delivery 1977," the shipbuilding executive said.

He estimated this would amount to a 30 per cent increase in transportation costs.

A spokesman for the London-based peninsular and

oriental navigation company, said the F.O.B. price for LPG ships now was too high.

P&O's gas transportation director, Pat Mitchell, called the current status of the shipping market poor, telling the seminar that he felt it could not continue at its present low level.

However, he saw a growing LPG market particularly in the U. S., and in order to have the U. S. market realized, the U. S. would have to lift the present allocation and price control regulations.

"But above all, the OPEC F.O.B. prices will have to be reduced to a more realistic level," said Mr. Mitchell. "And fortunately, there are clear signs today that producers are beginning to understand that market forces and prices are really beginning to come down."

"In the long run," he concluded "there must be every reason for confidence in this business. From the late 70s onward, LPG supplies will become abundant and the market demand rather than the supply limited. By the mid-80s gas prices will reach some sort of equilibrium where the demand equals the supply, and all involved should then get a fair deal."

WORLD ENERGY

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Burmah Oil back in stormy waters

by Vincent McCullough

Financing is never an easy subject to follow. And the financing of the LNG (liquefied natural gas) carriers being built by General Dynamics for ultimate charter to Burmah Oil Tankers, is more complicated than most. Eight LNG vessels are either under construction or under contract to be built at General Dynamics' Quincy Yard in Massachusetts. Three of these LNG carriers will be used to service a transportation contract from Algeria to the Eastern seaboard of the U.S.; the remaining five will be employed to carry LNG from the Badak gas field in Indonesia to Japanese utilities.

The major issue raised by last week's New York Times article is whether or not these vessels met legal requirements to qualify for Federal assistance with building costs. Without these so-called Title XI guarantees and subsidies the whole LNG operations could be uneconomical propositions and construction of the ships would almost certainly be stopped. For Burmah that could be disastrous, possibly fatal.

Under Title XI only US companies can qualify for Federal aid. The vessels must be owned by an American company. Are they? Taking the three LNG vessels to be used on the Algerian run first, they are owned by a consortium of three—First National City Bank, First National Bank of Chicago and GATX Corporation, all as American as Sitting Bull.

This consortium has a bareboat chartered the three vessels to a subsidiary of Energy Transportation Corporation (another US company). Under a bareboat charter the owner does not operate the ship but leases it for a specified period at a rate which (normally) just covers the capital repayments plus interest. Energy Transportation, in turn, has time chartered the three vessels to Burmah Oil Tankers, the US subsidiary of Burmah Oil. Under the terms of a time charter (again normally) Energy Transportation would act as the owners, supplying the masters, crews, stores and provisions but not paying the voyage costs. That would be Burmah's responsibility. Taking this lease financing arrangement at face value then clearly the three LNG vessels are US owned and should qualify for Title XI aid.

The position on the remaining five LNG vessels for the Indonesia/Japan run is a little more complicated. The five ships were to be financed by similar lease financing through a consortium led

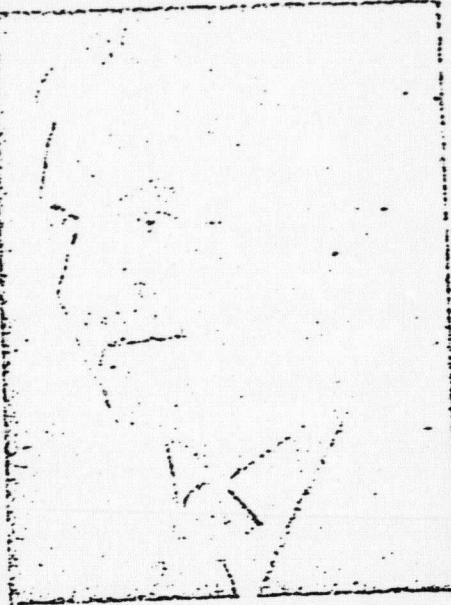
by Chemical Bank and including Bankers Trust. Following Burmah's troubles at the beginning of last year Bankers Trust first withdrew its commitment and the other members of the consortium quickly followed suit.

For construction on these five to continue Burmah was obliged to give certain financial guarantees, which are currently costing \$7½m to \$8m a month, until a new consortium could be drawn together and permanent finance arranged. The idea now is that General Dynamics et al will own the vessels, bareboat charter them through Cherokee Shipping to Energy Transportation, which in turn will time charter them to Burmah. All above board.

Surprisingly, the Securities and Exchange Commission and the Federal Maritime Administration (both reported by the New York Times to be investigating Burmah and Title XI aid) have denied that they have any evidence to indicate wrongdoings. Indeed, the report appears to have stirred no official reaction, other than Representative Les Aspin, a Wisconsin Democrat, calling for an investigation by the Attorney General.

Elsewhere, though, tempers and temperatures are running high. Mr Christopher Chen, the Chairman of Energy Transportation told me from New York this week: "there is no question that whoever planted the story with the New York Times must have done so from selfish motives. The New York Times got some material and wrote the story around it. It is incumbent upon them to check the facts. They did not speak to us. I call that irresponsible journalism."

If the permanent financing of the remaining five LNG vessels falls through and construction is stopped there will certainly be plenty of idle LNG tonnage around in mid-1977 (the start-up date for Badak) to take up the Indonesia/Japan transport contract. IO International, which had abortive talks with Burmah last year to take over financing of its five LNG vessels, itself has two LNG carriers nearing completion in Japan with no prospect of employment; there is also a number of Norwegian and French LNG vessels with no charters. As one shipping broker in London so eloquently put it: "when there is the prospect of even one LNG vessel or £50m worth of tonnage lying idle you must expect the industrial dagger to be



Burmah's Down: the last battle

drawn. It's even nicer if you can find a Macbeth to wield it."

For the rest of the point brought out by the New York Times, Burmah does not deny that \$1m compensation was made to Dr John McMullen for loss of office when he was dismissed last December. That's an issue Burmah's shareholders might like to take up with the main board in Swinden.

On the question of pay-offs to Indonesian officials, it can, after the Lockheed affair, come as no surprise that there are certain countries where the official machinery has to be well greased with dirty dollars if any business venture is to succeed. However, Mr Elias Kulukundis, former President of Burmah Oil Tankers and the man who fixed up the Indonesian end of the LNG venture denies that any payments were made or promised: "ours was the lowest tender and you don't make pay-offs to have the lowest tender accepted."

Whether by astute investigation or outside instigation, the New York Times article could now prompt enquiries where they never existed before. Any delay on the construction of the vessels could wreck the Indonesia/Japan transportation contract and with it Burmah. The torpedo has not yet struck home. If it does not then Burmah's shares at 32p have plenty of upside; if it does, bail out.

Charterhall Finance, which holds a net 7.64 per cent interest in the Buchan field on 21/1 through its 37.02 per cent stake in CCP North Sea Associates, is making a one-for-four rights issue at 20p a share. Of the total proceeds of £1.1m, some £513,000 will be used to take up Charterhall's full entitlement to a rights issue from CCP.

The Financial Times Friday August 20 1976

U.S. probes Burmah aid applications

BY STEWART FLEMING IN NEW YORK AND JOHN WYLES IN LONDON

INVESTIGATIONS are under way in the U.S. into allegations that Burmah Oil Company has applied for Federal shipbuilding aid to which it may not be entitled as well as making improper payments to Indonesian officials to secure a major contract.

Last night Burmah categorically denied that "any fraud was involved in the applications for financing assistance from the U.S. Maritime Administration." These, a statement said, were made in full accord with the laws of the U.S.

Sources within the company confirmed that internal investigations were under way to see whether officials had acted improperly in relation to Indonesian contracts.

The allegations covering requests for shipbuilding aid and the Indonesian payments were contained yesterday in a 2,000-word article in the New York Times.

The Securities and Exchange Commission said yesterday that it would look into alleged improprieties by Burmah and General Dynamics Corporation whose Quincy shipbuilding division has the contract to build five liquefied natural gas carriers for which Burmah has long-term charters to carry gas from Indonesia to Japan.

Financing these ships is regarded by Burmah as the last major obstacle to resolving its crisis. As soon as the contracts were placed with General Dynamics, attempts were made to sell the ships and then charter them back. This proved unsuccessful and Burmah has been saddled with payments of \$7.5m. a month to the shipyard.

Earlier this year it was announced that negotiations were

under way for General Dynamics to take an equity holding in the ships. Final agreement has not been announced but Burmah's statement asserted that the ships "will be owned by several U.S. corporations including General Dynamics and will be chartered to subsidiaries of Energy Transportation Corporation, a U.S. body which is in no way affiliated with Burmah."

Question of ownership is crucial for applications for Federal shipbuilding aid.

Under the U.S. Merchant Marine Act, construction subsidies of up to 35 per cent. and credit guarantees of up to 85 per cent. are available only to American companies. Burmah's ships are being built to the account of a company called Cherokee Shipping Corporation. The validity of applications for Federal aid turns on the fact that the directors of Cherokee are all American citizens and therefore, on the surface, entitled to shipbuilding aid.

A Maritime Administration Agency spokesman admitted yesterday that if Cherokee is controlled by Burmah, this would "taint" the American company's citizenship.

However, commenting on the New York Times story, the spokesman said that the Agency did not have evidence casting doubts on the legality of the Burmah contracts.

Meanwhile, in Washington a spokesman for the House of Representatives Government Operations Committee confirmed that it had made "inquiries" of the Maritime Administration on the validity of applications for Government guarantees to cover the cost of building the ships.

BUSINESS

The Herald

Published with The New York Times

PARIS, SATURDAY-SUNDAY

General Dynamics, Burmah Said Victims

Firm Sees Conspiracy in Ship Case

By Terry Robards

NEW YORK, Aug. 20 (NYT).—General Dynamics Corp. charged yesterday that unidentified competitors, "under desperate pressure from financial and other sources," were conspiring to overturn its billion-dollar shipbuilding project for Burmah Oil Co. of Britain.

General Dynamics made the charge following the disclosure in The New York Times (IHT, Aug. 20) that two government agencies and at least one congressional committee were investigating whether Burmah had illegally obtained commitments for federal backing for the ships.

The disclosure triggered a heavy-influx of sell orders yesterday for General Dynamics shares on the New York Stock Exchange. Because of the influx, there was no trading throughout the day in the issue, which had closed Wednesday at 53 3/4, down 1.

Burmah shares were hit by

heavy selling on the London Stock Exchange, where they fell the equivalent of about 11 cents, or 15 per cent, to about 61 cents each. American Depository Receipts for the shares, which are traded over the counter here, dropped 1/8 to 9/16.

Meanwhile, Rep. Les Aspin, D-Wis., asked Attorney General Edward Levi to open an investigation into whether any fraud had been committed in connection with Burmah's applications for government backing.

In a statement responding to the New York Times article yesterday, David Lewis, chairman of General Dynamics, noted that certain revisions were being made in a natural gas transportation agreement involving Burmah and five of the ships under construction.

"When the agreement is completed, the final documentation will be submitted to the United States Maritime Administration

for its approval," he said. "We are confident that the presently proposed organization arrangements meet all of the requirements of the United States law."

Mr. Lewis said: "There have been several shipping organizations, including at least one American company, making strenuous efforts to upset the three-year-old Indonesia-to-Japan liquefied natural gas shipping contracts under which five of the General Dynamics-built ships are scheduled to operate."

"These companies have ships built in foreign shipyards which can not be put in the service for which they were originally intended because of major delays in the construction of liquefaction plants in several countries."

Financial Pressure

Mr. Lewis continued: "They appear to be under desperate pressure from financial and other sources to put their expensive vessels in service to cover their heavy ownership costs. It is easy to conclude that these people were the sources of the out-of-date material used by the Times to describe tanker ownership and operating arrangements that are no longer under consideration by the parties involved."

Mr. Lewis did not refer in his statement to a memorandum of law obtained by the Times, nor did he mention court precedents relating to the difficulty of remedying a violation of the Maritime Act, once it has been committed, through new corporate structures.

Reports have circulated recently in the shipping industry and in the financial community that certain unidentified domestic and foreign interests were seeking to upset the Burmah financing in an effort to obtain the liquefied natural gas shipping contracts for themselves.

When asked to identify the individuals or companies that were attempting to cause a breakdown of the Burmah ship financing, a spokesman for General

Low-Value

By Hobart Row

WASHINGTON, Aug. 20 (WPT).—President Nixon's new economic world with his "new economic" the convertibility of the dollar, posing a 10-per-cent surcharge on a wage-price freeze at home.

To Japan, the "Nixon shock" Their huge trade surplus with a result not only of their industrial in part traceable to a substantial currency, was a major reason new American program.

Eventually, although the international behavior—was abandoned as part of a general currencies. Now, five years later, same scenario is beginning to be signs of growing irritation between States and Japan. Having a blow of a fourfold increase in brilliant management of the dollar Japan is now running the large of the postwar period.

According to a new international Japanese economy, the surplus the world scored from \$1.4 to \$5 billion in 1975 and to an \$11 billion so far this year. That record for a Japanese trade surplus in 1971, the one that aroused competitors.

As for trade with the United States, exports in the first half of 1976, producing a surplus of \$1.1 billion as a whole, unless the trend can look forward to a \$5-billion this country, or even larger than \$4 billion.

No one in Washington is

Fed Amends Its Statement On Bankers Trust Condition

NEW YORK, Aug. 20 (IHT).—In an unusual move, the Federal Reserve Board amended its statement yesterday that Bankers Trust New York Corp. "has been experiencing financial difficulties that have detracted from its overall financial condition."

The Fed's uncharacteristically blunt language had caused a sharp reaction on the New York Stock Exchange, where Bankers Trust shares fell 2 to 33.67 at the close.

In its second statement, the Fed said it considers the bank to be "a sound institution with responsible management."

The Fed had issued its initial statement in explaining why it had rejected an application by

prised him, it is no secret that Bankers Trust has financial problems.

But James Ehlen, an analyst for Goldman, Sachs, an investment banking firm, said that Bankers Trust over the last several years has had the poorest performance of the six major New York banks.

He said that Bankers Trust has a lower margin of capital—the difference between a bank's assets and what it owes—than it should. Last year, in an attempt to raise capital, the bank sold \$75 million in preferred stock.

The company reported its earnings in the second quarter were off 19 per cent from last year. Many major banks have been

Why the Ger

By Craig R. Whitney

BONN, Aug. 20 (NYT).—Nobody seems to believe the West German Finance Minister, Hans Ehard, when he insists that the mark will not be revalued. Day after day in recent weeks, speculation on the European money markets kept pushing the mark's value against the dollar.

Final attempt to shipwreck Burmah Oil

TRUE, and I think it is true, that somewhere in the great constellation of American corporations is endeavouring to disrupt the links between Burmah Oil, Dynamics, the Indonesian State oil, Pertamina, and the Japanese which are interested in importing liquefied natural gas in General Dynamics-built tankers originally ordered by them the timing of its thunderbolts must have been bettered.

But big drain on Burmah's battered resources are the payments necessary in connection with the liquefied natural gas tanker-building programme under General Dynamics' Quincy yard in Massachusetts. This burden can be met only when alternative satisfactory arrangements are made, which in turn will be only when the basis of the original negotiations have been renegotiated. These negotiations are at this time proceeding and the delicate stage which they reached must be upset by the massive pressure on Burmah and General Dynamics in the columns of the New York Times Thursday.

As reported yesterday, the allegations that Burmah had made "under the table" payments to Indonesian officials, were based apparently on remarks made to Burmah's former managing director, Nicholas Williams; 2. That Burmah's of a million dollars "compensation" to Nicholas Williams, who was briefly president of Burmah Oil Tankers after the debacle of being investigated; 3. That the United States and Exchange Commission is into stock dealing by leading General Dynamics executives; 4. That United States guarantees given in support of eight L.N.G. tanker building programme in the United States have been "illegally" procured since Burmah is an American corporation and the payments it has made to comply with regulations are in violation of the

New York Times contrived to convey a false impression that serious investigations are underway by the two Federal agencies involved, the S.E.C. and the Federal Reserve, and a Congressional Committee. This was an overstatement though

it is not impossible that such formal inquiries may be set up as a result of the New York Times article. Yesterday, after the article had appeared, Representative Aspin, a Democrat from Wisconsin, asked the Attorney General "to open an investigation into whether a fraud has been committed."

On Thursday evening, as we reported yesterday, the Maritime Agency said it had no evidence to indicate that there was fraud or any type of wrongdoing in Burmah's application for Federal assistance. Burmah "categorically" denied any fraud, pointing out that the five ships in question would be owned by several American corporations and would be chartered to subsidiaries of the Energy Transportation Corporation, a United States company in no way affiliated with Burmah. And for good measure, David Lewis, chairman of General Dynamics, said vehemently that "at least one American company has been making strenuous efforts to upset the three-year-old Indonesia-to-Japan L.N.G. shipping contract under which the General Dynamics-built ships are scheduled to operate."

Desperate behaviour

It is certainly not without relevance that other L.N.G. ships under construction outside the United States for American interests are both behind schedule and face a lean prospect when completed. The financial pressures are probably severe enough to provoke desperate behaviour.

The legal case against Burmah is evidently based on a memorandum by one of the company's own American lawyers, Kurrus and Jacobi, in Washington, submitted to Burmah eleven months ago. Burmah rejected Richard Kurrus's arguments, standing by the opinion of its New York lawyers Simpson and Thatcher (no relation to the Leader of the Opposition's husband!).

It is unclear whether Mr Kurrus is still of the same opinion as he was eleven months ago. Burmah certainly is. Anyone with a scrap of concern for this ill-fated British company, which has striven so hard under

chairman Alastair Down to salvage something worthwhile from the wreck, will hope Burmah is right.

House of Fraser wilts in the sun

IT HAS BEEN a magnificent summer for the sunlit oil and deodorant sellers but wiling weather for fashion and menswear which is why Foots is the only national retailer beaming at the sun and why House of Fraser's second quarter 17.1 p.c. sales growth is disappointing.

In early May the group's sales were 23 p.c. higher but this obviously owed a deal to the comparison with a "flat" month after the pre-VAT change boom, and something to the Cheltenham and Hyde stores acquired in August, 1975.

Then the weather took a hand, hitting fashion and menswear—as it did generally—and also leading to less good than internally expected "summer sales"—an experience not peculiar either to Fraser. The result was that not until July did the group get back to the rate of increase it has shown for the quarter as a whole.

Stripping the acquisitions out, Fraser's sales growth looks to be in line with the departmental store average. The disappointment is that it has not beaten it given that it has Harrods, a mecca for tourists. Currently sales overall are 21 p.c. higher with all London stores doing well and Harrods "better than any."

Encouraging, since the group structure comparison is now a direct one but possibly reflecting a fair measure of what the trade is calling tax rebates spending.

Second quarter pre-tax profits are 19.9 p.c. down at £3.66 million. But there are extenuating factors—the switch to monthly stocktaking continued to depress profits by comparison with the corresponding period; the interest charge was £472,000 up from 1975-76's £18 million spending on fixed assets having to be fully financed whereas only part of it was there last time; while there were further acquisition losses.

These have been brought down from the first quarter's £565,000—probably to around £100,000—and the group is holding to its view that they will be profitable on the year as a whole.

It is confident, too, that sales will improve

with a change in weather, while, of course, it is not unaware of the heavy second sales weighting of departmental stores.

Costs now should also be falling rather than both the smaller increase in rates last year which averaged only 15 p.c., and then lower wage increases in July. Moreover, group should be obtaining improvement in productivity, particularly in the recently acquired and now refurbished stores.

Even so it could have to run hard to maintain profits at 1975-76's £20.8 m. pre-tax. The earlier move from yearly cyclical—monthly—stocktaking comparisons of the interim 1975-76 (£1.1 million) against a declared £6.55 m. difficult, but it looks to need 10 p.c. growth in the second half to come out in line with the first half and not until July did profits of last year.

Ahead of further evidence of consumer spending trends the shares look fairly well at 75p with the historic price-earnings ratio of 8.9. Since May they have fallen 15 p.c. against the market's 7 p.c. drop so they have already "taken their knock" and are unaffected by these latest figures.

Another factor limiting the downward potential is the yield—9 p.c. prospective—the interim dividend being raised 1 p.c. to 1.375p net to 1.5125p on Dec. 10.

Price tag for an executive

THE DRAIN of good executives away from Britain because Government policy prevents them being paid their market value exemplified by head-hunting now going in City shipping circles by the White & Carter consulting group.

The job on offer is a tax-free £50,000 (free car and house) post in Greece "substantial funds available" to start develop a large-scale international shipping enterprise. The man wanted "is unlikely to be under 45."

"How can we compete with that kind of inducement when our own Government deliberately preventing us from reward initiative and enterprise?" was the comment yesterday from one major shipping executive. It might, however, be pertinent to ask many British companies are prepared to make 45 the minimum age limit, not that the maximum, in offering top jobs.

of... trial base, and foreign in-
munt... He was also no
mean performer on the hustings,
and sometimes they called him
"The wee Orange orator."

Respect for his cold political
skillfulness was Northern
Ireland's predominant reaction,
but it was tempered by admira-
tion and affection. Today, he
is rejected by hardcore
Unionists and the staunchly
loyalist working class as the
man who sold out to "the
hearts" over power-sharing and
reviled by many Catholics as
the architect of internment
without trial, which he intro-
duced when Premier in 1971.

End of an era

Among the reasons he has
given for his sudden resignation
from the leadership of his own
moderate, breakaway Unionist
Party of Northern Ireland, is
his conviction that, for the time
being, Ulster politics are dead.
He believes the hub of direct
rule will continue for at least
two years and possibly to 1980.
His going certainly marks the
end of an era, even if his polit-
ical career in fact came to an
abrupt halt more than two
years ago in May, 1974, when
militant Loyalists grouped
under the Ulster Workers'
Council, staged a general strike
and toppled the five months
old power-sharing Executive of
which he was Chief Minister.

It was, if anything, a more
severe blow than his first fall
in March 1972, when his 12
months old Stormont Govern-
ment was ended by Westmin-
ster's imposition of direct rule.

Mr. Faulkner is a man who
clearly enjoyed the excitement
of power—the urgency of help-
coptered inspection trips and
the delicacy of negotiations such
as those that led Courtauld's in-
vestment in Ulster, despite the
crisis, are recollections that
edge into his conversation.

But he has now been in the
wilderness for 27 months, and
his own power base, his small
UPNI party, had but five of the

S. African imports set record

By Graham Hatton

JOHANNESBURG, August 20.
SOUTH African imports soared
to a record R948m. (F452m.) in
July, compared with R556m.
(F377m.) in June and R356m.
(F237m.) in July last year,
according to figures released
this afternoon by the Depart-
ment of Customs and Excise.

The Reserve Bank said that
much of the rise was because
of advance clearing of goods
ahead of the imposition of
South Africa's import deposit
scheme on August 2. The
authorities gave permission to
importers to clear goods in
transit at sea. The August im-
port bill should be well down,
the bank added.

Exports were £237m. com-
pared with £282m. in June and
£215m. in July last year.

In the seven months ended
July the shortfall was about
£301m. compared with £637m. in
the year 220 period. Imports
were £2.5bn. (£12.2bn.) and ex-
ports £1.7bn. (£1.5bn.).

Figures exclude exports of
gold bullion and imports of mili-
tary equipment and petroleum
products, but include Krug-
rand gold coin sales.

Price drop

With the outlook for gold be-
coming increasingly bearish,
more bankers and businessmen
are expressing deep concern
about the future of the rand.
Their view is that a further de-
valuation cannot be avoided.

Since last year's devaluation
of about 18 per cent, the aver-
age bullion price has dropped
by nearly 30 per cent, and pros-
pects for the metal in the near
future are decidedly gloom,
according to a Johannesburg re-
port to-day.

The governor of the South

Burmah in Japan talks on Pertamina deal

BY STEWART FLEMING

NEW YORK, August 20.

TWO BURMAH oil directors,
Mr. Campbell Anderson and Mr.
Stanley Wilson, are in Japan
attempting to re-negotiate the
liquefied natural gas contract
between Pertamina, the Indo-
nesian State oil company,
Japanese Utilities and Burmah.

The objective of the renegotia-
tions appears to be to obtain
higher prices on the LNG con-
tracts in order to help the
financing of the project.

It is because of these delicate
negotiations in relation to what
Burmah saw as one of its few
potentially profitable shipping
involvements, that allegations in
The New York Times on Thurs-
day have come at a most in-
opportune time for Burmah.

The allegations in The New

York Times in part related to the
financing with Government
guarantees of five ships to carry
the LNG from Indonesia to
Japan. Burmah has vigorously
denied any impropriety in the
applications for these shipping
finance guarantees from Mari-
time Administration by an un-
related company, Cherokee Ship-
ping Corporation.

Moreover, it has previously
announced that the original
financing scheme involving the
Cherokee companies has since
been abandoned and it is now
proposed that the U.S. aerospace
and shipping company General
Dynamics is engaged in negotia-
tions to take an equity interest
in the ships.

Mintoff pledges Arab pact

BY OUR OWN CORRESPONDENT

MALTA, August 20.

A RETURNED Labour Govern-
ment will sign a military and
financial accord with four Medi-
terranean States when the
present military facilities agree-
ment with Britain and Nato ex-
pires in 1979.

The agreement, which would
not cover the staging of foreign
troops in Malta, has been sug-
gested by Premier Dom Mintoff
to Italy, France, Libya and
Algeria. Mr. Mintoff is believed
to have told yesterday's national
executive meeting that Libya and
Algeria have already agreed with
the proposal while Italy agreed
in principle but must study
countries.

whether this interferes with her
Nato connections.

The defence and aid accord,
which is believed to be included
in the Labour Party's election
manifesto, would suggest Mr.
Mintoff is convinced the island
is unable to do away with the
£50m. currently earned through
Malta's military ties with Britain
and Nato and that the island's
best interests are served by a
mutual defence pact to cover any
eventuality.

The accord would also create
a unique military alliance
between Arab and Nato

Continued from Page 1

Doubts over Dole

Ford's choice as a "doleful nomi-
nated" controls the party.

Many delegates had the same
reaction and it became clear last
much in common with Mr. Ford.

COLUMBIA

the very leaders with whom the
Government should be discuss-
ing the situation.

"The widespread detentions
can cause nothing but dismay
among thinking people. Simply
to arrest people who are
accepted as leaders of the
black communities throughout
the Republic is the last way
to defuse a dangerous situa-
tion."

"South Africa is slowly but
surely slipping into the maw
of a police state with scarcely
a ripple. People disappear.
No information need be given
by the police as to their where-
abouts or even under which
law they are being held."

In the short time that section
10 of the Internal Security Act
had been operational, an unde-
clared number of people had
been picked up by the police
and were being detained at
unannounced places.

Mr. Sizeman said: A short
while ago Mr. Vorster, the
Prime Minister, had told an
overseas journalist that there
were no political prisoners in
South Africa. "Every person
was there," said the Prime
Minister, because he had been
found guilty of a crime against
the State by a court of law.

"Since Section 10 of the
Internal Security Act has been
put into operation, can the
Prime Minister truly say to-
day that there are no political
prisoners in South Africa?"

Mr. Sizeman asked.

Our Foreign Staff writes: In
its first official reaction to the
announcement of Namibian
independence for the end of
1978, the British Government
said that it welcomed any move
representing progress towards
independence. It also welcomed
the intention to retain the
country as a military state.
However, the Foreign Office
said that it had always been
British policy that the people
of Namibia should be able to
express their views freely in
a single electoral process re-
stricted over the whole territory,
in which all political parties,
including SWAPO, would be
allowed to campaign freely.

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SUNDAY TELEGRAPH AUGUST 22, 1976

ure grows for S.E.

iry into S.U.I.T.s

c silence has followed my suggestion last week raser, chairman and managing director of Scottish ements, should speak out over the extraordinary million property loan—since written off—from the units.

owever, there has been mounting zied activity. Sir Hugh has now extent of circulating privately a titutional investors.

the error, but another new factor and anger during the week—the of

any suggestions that there was an error in the accounts and in the belief that there existed at the times of such sales no circumstances whether in relation to the Amalgamated Caledonian loan or otherwise which would make such sales by him in any way improper."

The shares in question were placed privately by Grieyson Grant among a number of institutional shareholders.

In another statement, the group's auditors Touche Ross admit that they were aware of the loan, made in October 1974 to finance the redevelopment of the Army and Navy stores site, before S.U.I.T.'s 1974-75

accounts were prepared. "With regard to S.U.I.T.'s 1975 accounts," Touche Ross says, "the two payments of advances and cash at bank should have been shown as separate figures as at March 31, 1975. In the course of preparing the accounts these two amounts were incorrectly aggregated and nobody noticed the error."

"In our view this was an inadvertent error." Just whether the institutions will be satisfied by these statements remains to be seen. The need for a Stock Exchange inquiry is being privately expressed.

Although we are happy to make public the statement he has circulated privately, labelling it "not for general circulation," he should certainly repeat it in public himself, for the benefit of non Sunday Telegraph readers.

We must also point out that in the eyes of the critical institutions the issue is not whether he was aware that there was an

error in the accounts. Was he aware of the likely need to write-off, or down, the property loan?

Attempt to ditch Burmah deal?

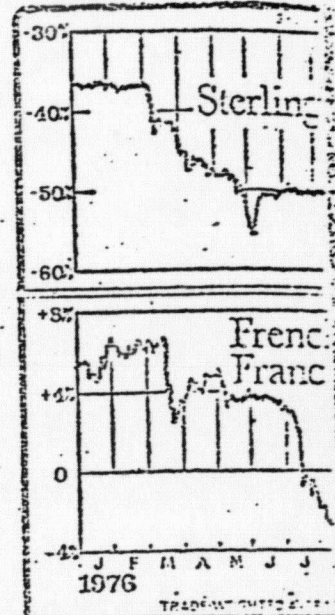
THE story of the possible probe into Burmah's ship-building contract in the United States to haul oil for Petramina, the Indonesian oil company, has been bubbling along for some time (see this page June 15). But its reappearance last week in the New York Times adds support to the strong suggestions on the other side of the Atlantic that it is being used in an attempt to try to ditch the Burmah deal.

The chairman of General Dynamics, which is building the ships, has talked angrily of "several shipping organisations, including at least one American company, making strenuous efforts to upset the three-year-old Indonesia to Japan liquified natural gas shipping contracts under which five of the General Dynamics built ships are scheduled to operate."

General Dynamics is naming no names but one suggestion is that some Japanese shippers are behind the spoiling move. Another suggestion is that the American shipping billionaire D. K. Ludwig is stirring things up.

The Japanese, in particular, have reason to be concerned about the contract. The Japanese have been burned by the recession and may see some attractions in undoing a contract that is designed to provide liquid natural gas to their country.

The contract concerned is worth \$200 million and is in two parts. Five of the so-called Cherokee ships being built for Burmah by General Dynamics will be under a long-term contract to carry gas from Petra-



European currency markets days following the previous activity was less hectic the franc and Italian lire remain central bank was forced by the Scandinavian currencies were weak. But the D-mark were strong. Sterling market chart shows, its real fall to the franc's collapse has real

among those who were previously in two minds.

A group of his clients has agreed to stand by him as matter of principle. "I'll do my fees if necessary, just to the man in business," said one of them privately to me. A Debenham's Sir Anthony Burn has not hesitated to speak publicly in Addey's favour.

Where all this will end is impossible to say; certainly the very least John Addey Associates will need to be slimmed down. But it will be if the agents of destruction not have things all their way.

Just a respite for the 'snake'

THE European currency agreement or "snake" lurched on through another week with the pressure devalue on its weaker members — especially the Dutch guilder and Belgian franc becoming stronger and move towards a revaluation of the D-mark gathering

to invest a little

TD needs



Burmah: crisis or plot?

THIS WEEKEND, the future of Burmah Oil, which seemed finally to have been saved, is again in the melting pot. This time the cause is not a trading reverse, but suspiciously timed allegations about the legitimacy of the web of financing arrangements and contracts surrounding the use of Burmah's new liquid natural gas (or LNG) tankers.

Financing the building of these tankers is costing Burmah almost \$5m a month that it can ill afford. This is the biggest financial headache remaining to be resolved by new chairman Alastair Down and Burmah is at this moment poised to conclude a deal to extricate itself. The possibility that this might not all happen dragged Burmah shares down from 40p to 33p last week.

The allegations first came to the public eye through Representative Les Aspin, an ambitious 40-year-old Congressman from Wisconsin who sends out a stream of statements to the press and has already built himself a reputation as a scourge of overspending by government departments and, via the Lockheed papers, of business corruption. The Burmah story seemed tailor-made for the Aspin treatment. It suggested that Burmah had wrongly obtained US Maritime Administration financial guarantees for the ships without which they would probably not be viable, and that its officers had wrongly secured contracts to ship natural gas from Indonesia to Japan by improper payments, a suggestion that would shock few who know the ways of the East.

But the true impact only came last week when the distinguished New York Times elaborated on the case in a hard-hitting 2,000 word story.

According to the report, the Securities & Exchange Commission, the Federal Maritime Administration and "at least one congressional committee" were investigating. The SEC, FMA and the relevant committee have all issued statements somewhat dampening this suggestion. Most strongly the FMA says it "is not investigating any question of whether Burmah Oil illegally received government loan guarantees and has no information to suggest wrongdoing."

Since all these potentially tigerish investigators seem, to say the least, lethargic, the question must be asked: why did these allegations arise?

The point at issue is whether companies connected with Burmah were entitled to FMA

putably British, it is clear that we are dealing in technically tricky waters.

The story starts with Burmah arranging the Indonesia-Japan transport deal and needing ships. It therefore tailored a package to offer to potential American owners to have the ships built in the US by General Dynamics and eventually time chartered for the Indonesian contract. The main company involved in the package is Cherokee Shipping whose directors are all American citizens. The ships are in its name. The complexity arises because troubled Burmah failed to get finance and has to meet progress payments for General Dynamics.

As the New York Times records, one firm of lawyers Kurrus & Jacobi, advised that "the continued involvement of those companies in the ship construction contracts will create a cloud on the title of the vessels". Other firms of lawyers took the opposite view and the FMA agreed with the majority.

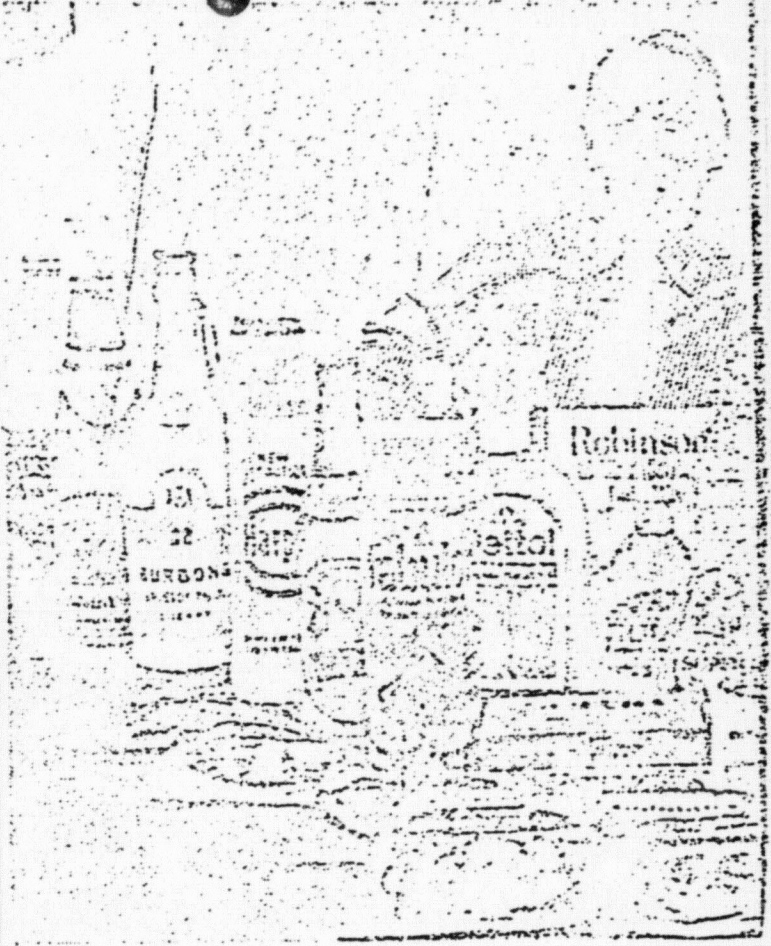
Having sorted out Burmah's North Sea and more disastrous shipbuilding commitments, Alastair Down has now found owners for the LNG ships. The end of the crippling \$50m a year cash outflow is in sight.

Were this not-quite-completed deal to be endangered by long uncertainty and investigations, the consequences for the contract and for Burmah could be highly damaging.

This partly explains the strong riposte made by General Dynamics chief David Lewis. "At least one American company," he says "has been making strenuous efforts to upset the three-year-old Indonesia-to-Japan LNG shipping contract."

Inevitably the name of IU International—whose Gotaas-Larsen shipping subsidiary had earlier abortive talks with Burmah and has three LNG tankers on order from General Dynamics, thought not to be fixed for work—has cropped up in the story. But in the context of the worldwide shipping slump there are all sorts of shipbuilders, owners, operators and financiers who would like to see Burmah's tankers off the market and the Indonesia-Japan LNG contract up for grabs.

This too may help explain why Burmah, apart from a terse denial, is keeping quiet. Even now it has two men in the Far East tying up loose ends of its deal. City feeling is that despite its mammoth fund raising (some \$50m in recent deals) a cash crisis seems inevitable within 12 months—unless the LNG finance deal is sealed.



James Cleminson: economic recovery but a little loss of freedom

Reckitt going like a

SOMETHING somewhere is usually going wrong at Reckitt & Colman. Forty or so different economic, financial and even political environments to cope with round the globe makes that almost inevitable. But last week R & C showed what it really can do when it fires on all cylinders.

With footwork more suited to a lightweight than one of Britain's biggest businesses, it rushed out a brilliant set of half-time profits figures, and slapped in a £7.3m counterbid for artists' materials group Winsor and Newton—topping the offer from Letraset by the handsome margin of a quarter. News from almost every part of the empire was bright or even better. Group profits were within a hairsbreadth of a 50% improvement, while earnings per share were more than 61% to the good.

It was the swiftness of the improvement surprised those sections of the city which tend to think of R & C as a sluggish and even slightly dozy blue-chip. Even the lukewarm are now raising their sights for the full year profits to the £50m to £55m range against £35m last time.

In a nutshell, Reckitt & Colman's massive strength has stemmed from a spectacular array of brand leaders round the world in food and household products. Some are so entrenched in their markets, that to their competitors at least, they must seem almost impregnable. In the US French's mustard is on just about every hot dog stand in the land. In continental Europe Harpic and Steradent (though under different names) sweep all before them.

In Jamaica, Wincarnis is a big seller and some even swear by it as an aphrodisiac. In the UK the list is too long to print.

On top of these traditional virtues, the half time statement showed a remarkably even distribution of profits round the world. UK accounted for 14%, the rest of Europe 14%, North America 19%, Australasia 23%, Africa 16%, and Latin America 12%. Chief executive James Cleminson puts the progress down to two main factors, economic recovery (often coupled with easing price controls) and the benefits of a couple of years spent improving the group's cash management.

Divisional management may have lost a little of the freedom

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And with relish he confessed to me how he knifed Setty with an SS dagger and topped his cut-up body—made up into three parcels—from a hired plane into the

What Hume, a war-time pilot, had not reckoned with was the tides. They washed Setty's remains up on the Essex marshes. Then painstaking police work led the Murder Squad to Hume as the killer.

None of that mattered, however, to the clear Hume. What he was after from me was cash, a lot of it, for his confession.

He piled on the gruesome details, apparently in the belief that the more gory the more cash-worthily the story.

Eventually his story became public—and the country learned with a shock how Setty, Hume's partner in a London "spy" car firm, actually met his violent end.

It was because he kicked Hume's mongrel dog Tony. Had it been a human being it would not have mattered.

Love

But Hume said: "I loved that dog more than I could ever love any woman. I have more sympathy for wild life than human life. I would not hurt a fly."

Of the death scene itself he was almost lyrical. "I was wielding the dagger," he said "just like our Stone Age ancestors did 20,000 years ago."

The arrogance of this man, illegitimate son of a West Country school mistress—"I hate her more than anyone else in this world," he once said—has remained with me all over these near 20 years.

Vividly I recall his oft-repeated rueful remark: "And I thought I had hit on the perfect murder."

For the man he murdered there was not one word of remorse or regret.

Regrets

The only thing Hume regretted was "the bloody fog" over the sea when he dumped Setty's remains.

He blamed it for ruining his perfect murder. Because of the poor visibility he thought he was much further from the shore than he was.

One thing that really puzzled him was how quickly Scotland Yard cottoned on to the fact that the cut-up body found on the marshes had been dropped from a plane.

Hume asked me the answer. I explained that when a body

FOREIGN REPORT

Reagan plans a new Party

Brian Vine
Kansas City, Friday

THE SPECTRE of a third party on the American political scene loomed today from the defeated Ronald Reagan.

The prospect of a link-up between the Reaganites and conservative voters disenchanted with the divisiveness of the Republican Party was put forward by Reagan as a reality if Jerry Ford fails to win election as President.

Obviously Reagan, the former Governor of California who came bitterly close to snatching the Republican Party crown from Ford, sees himself as one of the possible founders of the new party.

Detente

This powerful splinter group would take up his Right-wing policies of guarding against detente with Moscow or Peking.

He had the boldness to put forward his view at the convention arena last night while the orchestra was playing Hail to the Chief before President Ford made his acceptance speech for the party nomination.

JERRY FORD has blundered with a TV debate challenge to Jimmy Carter, several Presidential aides warned today.

One aide said: "He is challenging the wrong man at the wrong time. It is more likely to be a debacle, like the infamous John Kennedy made of Richard Nixon in 1960."

Dr. X words

Kruger's townships crackdown

Peter Hawthorne JOHANNESBURG Friday
THE POLICE crackdown on African riot leaders was almost complete today as Justice Minister James Kruger warned against the growth of "black Nazism."

Nearly all the heads of top black organisations in South Africa have been held in a wave of arrests across the country.

The latest arrests, of 12 "militants" in Durban, mean 76 have been held in a week under detention-without-trial laws, and 165 since June.

Today two churches were set ablaze as riots continued in townships around Port Elizabeth, on the east coast, which have cost 31 African lives in three days.

MR. KRUGER'S warning came in a speech near Johannesburg in which he declared that blacks and whites in South Africa "know each other after 300 years."

His audience laughed as he said: "He (the black man) knows his place and if not, I'll tell him his place."

Mr. Kruger added: "They always say 'We shall overcome,' but I say we shall overcome."

Blame

He blamed the unrest in the townships on the impact on youth of the "black power" movement in America.

It was more romantic than previous ideologies, "a sort of black Nazism."

But Mr. Kruger promised blacks better housing in white areas. A concession allowing blacks to buy 50,000 urban houses on indefinite leases was announced today.

A U.N. official claimed today that Rhodesia had killed 1,000 refugees in a raid across the Mozambique border last week. But Mr. Ian Smith's Government said those who died were guerrillas.

Oil giant faces fraud probe call

NEW YORK Friday

AMERICA'S Attorney-General was today asked to investigate allegations of fraud against Britain's Burmah Oil.

It is claimed that the huge oil company committed fraud in getting U.S. Government shipbuilding subsidies and guarantees meant only for American firms and citizens.

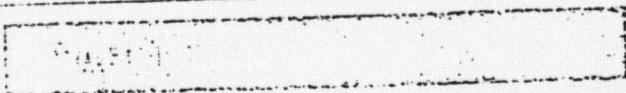
The request was made by Democratic Congressman Les Aspin after report that Government officials are probing Burmah's affairs.

At stake are eight natural gas carriers, worth \$500 million and thousands of jets to General Dynamics, who is building them for Burmah in Massachusetts.

The allegations arise from applications for Government-backing made by several corporations established in America by Burmah for the express purpose of complying with the American citizenship requirements.

The New York Times claims to have documents proving that affidavits of "corporate citizenship" of at least five Burmah subsidiaries were fraudulent.

The oil giant denies the charges and says it acted in full accord with U.S. law.



C	U	P
C	E	E

How many words of four letters or more can you make from the

at least one nine-letter word in the list. No plurals; no foreign words; no proper names. TODAY'S TARGET: 31 words. 100: 40 words. 200: 50 words. 300: 60 words.

General Dynamics Denies Improprieties in LNG Tanker Pact, but Stock Still Sinks

By a WALL STREET JOURNAL Staff Reporter

ST. LOUIS—The price of General Dynamics Corp.'s stock sank Friday despite denials of a report that improprieties may exist in a liquefied natural-gas tanker contract the diversified aerospace concern has with Burmah Oil Co.

General Dynamics's stock, faced with an influx, didn't trade on the New York Stock Exchange at all Thursday and, after a delay, finally opened Friday at \$51, down \$7.75 from Wednesday's last trade. In active trading, it closed at \$50.25, after dropping as low as \$49.125.

A report in The New York Times said investigations center on whether Burmah Oil illegally received government loan-guarantee commitments for construction of the tankers at General Dynamics' Quincy, Mass., shipyard.

In New York, Burmah Oil denied that any fraud was involved in applications for financing from the U.S. Maritime Administration.

In Washington, the maritime agency said it wasn't investigating the matter. Howard Casey, Deputy Assistant Secretary of Commerce for Maritime Affairs, said the agency doesn't have any evidence that would cast doubt on the legality of the contracts.

Earlier this year, General Dynamics announced its intentions to take an equity position in the five tankers, calling the arrangement a "positive step forward in the financing of these ships."

Report "Far From Complete"

David S. Lewis, chairman and president of General Dynamics, called the newspaper report "far from complete" and said it "treats a very complex business transaction in a very superficial manner."

Mr. Lewis said, "We are confident that the presently proposed organizational arrangements meet all of the requirements of U.S. law." He added that he expects the financing will be approved and the ships "completed and put in service in a timely manner." The tankers will transport liquefied natural gas from Indonesia to Japan.

The executive charged that for several months a number of shipping organizations, which General Dynamics didn't identify, have made "strenuous efforts to upset" the contracts. "These companies have ships built in foreign shipyards which cannot be put in the service for which they were intended because of major delays in the construction of liquefaction plants in several other gas-holding countries."

Mr. Lewis further maintained that these companies "appear to be under desperate pressure from financial and other sources to put their expensive vessels in service to cover their heavy ownership costs."

Companies Seen as Sources

Mr. Lewis indicated that these companies "were the sources of the out-of-date material" used in the newspaper article that described ownership and operating arrangements that aren't being considered any longer.

He added that Pertamina, the Indonesian national petroleum company, "has rejected alternate proposals for use of these companies' foreign-built ships" because of contracts with Burmah Oil.

Mr. Lewis said that Pertamina and Japanese utilities are negotiating revisions to the transportation agreement with Burmah Oil. When the agreement is completed, it will be submitted to the U.S. Maritime Administration for approval, he said.

The executive reiterated the company's belief that the LNG tanker program at

Quincy "is a good one and is vital to our national interests." He concluded, "We further believe that this program will be increasing in magnitude."

The newspaper article said that the Securities and Exchange Commission was investigating to determine whether Burmah shares should be permitted to continue trading over the counter and that the SEC was examining trading in General Dynamics shares by its officers.

In Washington, the SEC said it was aware of the controversy, but stressed that its interest was only preliminary and that a formal investigation wasn't under way.

Sale of Stock by Executives

Mr. Lewis also denied that any General Dynamics executives had sold stock in the company during the past eight months on the basis of information regarding the Quincy or other operation.

The Times said that the SEC was investigating sales of \$7.2 million of the company's stock by four key General Dynamics executives, including Mr. Lewis.

In a statement, Mr. Lewis said: "In all four cases, the stock owned by the executives had been acquired in the exercise of stock options awarded to those executives primarily in connection with their employment by General Dynamics long before the exercises. In order to finance the purchases of the stock, each of the executives was required to borrow substantial sums of money. The sales were made after the required holding period to enable the executives to pay off the loans and applicable income taxes resulting from the transaction."

Further, approximately 85% of the stock involved wasn't sold publicly but was sold to other directors of the corporation who are and were as fully informed on all aspects of the activities of the company as the executives. Under no circumstances could these sales involve any misuse of insider information.

Further, during the same period, other key executives of General Dynamics acquired approximately 48,000 shares, all of which they still own," Mr. Lewis said.

FOLLOWING IS THE ARTICLE APPEARED IN AUGUST 11, 1976 MORNING
EDITION OF YONKURI SHIMBUN.

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QUOTE

SUSPICION GROWS OVER LNG CHARTER

—JAPANESE OFFICIALS DENY, BUT WHY USE EXPENSIVE FOREIGN SHIPS?—

SUSPICION OF BRIBERY HAS ARISEN IN THE UNITED STATES IN CONNECTION WITH THE CHARTER OF TANKERS TO BE USED TO TRANSPORT LIQUEFIED NATURAL GAS (LNG) WHICH JAPAN WILL IMPORT FROM INDONESIA. THE TRUTH ABOUT THE ALLEGED BRIBERY IS YET TO BE CLARIFIED, BUT THE IMPORT OF INDONESIAN LNG INVOLVES MANY "COMPANIES OF SUSPICIOUS IDENTITY" SIMILAR TO THOSE INVOLVED IN THE LOCKHEED PAYOFF SCANDAL. THE BACKGROUND OF THIS CASE IS VERY COMPLICATED.

THE BURMAH OIL COMPANY OF BRITAIN, THE GENERAL DYNAMICS CORPORATION OF THE UNITED STATES, PERTAMINA, STATE-OWNED OIL COMPANY OF INDONESIA, THE FAR EAST OIL TRADING COMPANY, A JOINT COMPANY ESTABLISHED BY THE JAPANESE BUSINESS CIRCLES AND PERTAMINA, AND JILCO (JAPAN-INDONESIA LNG COMPANY), WHICH IS THE JAPANESE RECEPTACLE OF THE INDONESIAN LNG IMPORT PROJECT. THERE IS NO END TO THE LIST OF COMPANIES INVOLVED IN THE INDONESIAN LNG IMPORT PROJECT. HOW ARE THESE COMPANIES RELATED?

THE BURMAH OIL COMPANY, WHICH IS THE CENTRAL FIGURE IN THE ALLEGED BRIBERY CASE, IS ONE OF THE THREE MOST DISTINGUISHED COMPANIES IN BRITAIN. ESTABLISHED IN 1902, BURMAH OIL IS A MAJOR OIL COMPANY RANKING WITH THE SHELL OIL COMPANY AND BRITISH PETROLEUM (BP). IT IS ALSO ONE OF THE SHAREHOLDERS OF BRITISH PETROLEUM. HOWEVER, DUE TO POOR BUSINESS OF SIBUR OIL COMPANY WHICH BURMAH OIL PURCHASED IN THE U.S. AS WELL AS TO A SLUMP WHICH HIT ITS SUBSIDIARY, BURMAH OIL TANKERS COMPANY (WHICH OWNS 33 TANKERS), THE BURMAH OIL COMPANY SUFFERED FROM A BUSINESS CRISIS IN 1974. IT HAD BEEN GRANTED EMERGENCY LOANS AMOUNTING TO FOURHUNDRED MILLION POUNDS FROM THE BANK OF ENGLAND WITH BRITISH GOVERNMENT GUARANTEE.

IT IS SAID THAT THE PERSON WHO SERVED AS A BRIDGE TO CONNECT BURMAH OIL AND PERTAMINA OF INDONESIA WAS EDMUND G. BROWN, FORMER GOVERNOR OF CALIFORNIA WHO WAS A GOOD FRIEND OF I. SUTOMO, FORMER PRESIDENT OF PERTAMINA WHO WIELDED POWER UNTIL LAST SPRING AS THE "BIG SHOT" OF PERTAMINA.

THE GENERAL DYNAMICS CORPORATION OF THE U.S., WHICH BOASTS A WIDE RANGE OF TECHNOLOGIES FROM AIRPLANES TO NUCLEAR-POWERED SUBMARINES, LOST NO TIME IN UNDERTAKING THE CONSTRUCTION OF LNG TANKERS AHEAD OF OTHER COMPANIES BY PREDICTING THAT THE "LATTER 1970S AND THE 1980S WOULD BE THE AGE OF LNG SHIPS" AND ENGAGED IN ACTIVE PR ACTIVITIES TO SELL ITS TECHNOLOGIES ON LNG SHIP CONSTRUCTION TO THE WORLD MARKET. IT HAS SUCCEEDED IN RECEIVING ORDERS FROM PERTAMINA AND BURMAH OIL TO SUPPLY TANKERS TO TRANSPORT INDONESIAN LNG TO JAPAN.

BEFORE CONCLUDING TALKS WITH BURMAH OIL, THE GENERAL DYNAMICS CORPORATION RECEIVED AN ORDER FOR BUILDING THREE LNG TRANSPORT SHIPS FROM EAGENCOS (PHONETIC) COMPANY OF THE U.S. WHICH PLANNED TO IMPORT LNG FROM ALGERIA. THIS AMERICAN COMPANY EXCITED SUSPICION BECAUSE IT HAD PLACED AN ORDER FOR THE CONSTRUCTION OF LNG TRANSPORT SHIPS WITHOUT AN APPROVAL OF THE U.S. FEDERAL POWER COMMISSION WHICH HAS THE AUTHORITY TO GRANT PERMITS FOR THE IMPORT OF LNG.

WHAT EXCITED GREAT SUSPICION WAS THE "BILLIARD CONTRACT" AMONG GENERAL DYNAMICS, BURMAH OIL AND PERTAMINA. PERTAMINA CONCLUDED A TRANSPORT CONTRACT WITH "BURMAHST (PHONETIC) EAST SHIPPING COMPANY", A SUBSIDIARY OF BURMAH OIL ESTABLISHED IN 1974, WHILE THIS SHIPPING COMPANY CONCLUDED A TRANSPORT COMMISSION CONTRACT WITH BURMAH OIL TANKERS COMPANY, ALSO A BURMAH OIL SUBSIDIARY. THE BURMAH OIL TANKERS COMPANY CONCLUDED A CONTRACT WITH BURMAH OIL TANKERS COMPANY, ALSO BURMAH OIL SUBSIDIARY. THE BURMAH OIL TANKERS COMPANY CONCLUDED A CONTRACT WITH CHEROKEE COMPANY (OF LIBERIA) TO CHARTER LNG VESSELS TO BE USED TO TRANSPORT LNG FROM PERTAMINA TO JAPAN. THE CHEROKEE COMPANY PLACED AN ORDER WITH GENERAL DYNAMICS FOR BUILDING SEVEN LNG SHIPS. GENERAL DYNAMICS FIRMLY DENIED ITS INVOLVEMENT IN THE MURKED CORRUPTION.

THE SHERKES COMPANY'S NATIONALITY IS LIVERIAN. SINCE TAXES ON THE SHIPPING INDUSTRY ARE LOW IN LIBERIA, SHIPPING COMPANIES OFTEN HAVE THEIR HEAD OFFICES IN LIBERIA. IT WOULD HAVE SUFFICED IF PERTAMINA HAD CONCLUDED A TRANSPORT CONTRACT DIRECTLY WITH BURMAH OIL TANKERS COMPANY. MANY PEOPLE THINK IT UNNATURAL THAT PERTAMINA AND BURMAH OIL TANKERS HAD THE BURMAHST EAST SHIPPING COMPANY AS A CUSHION BETWEEN THEM TO CONCLUDE A "BILLIARD CONTRACT".

BOTH BURMAH OIL TANKERS AND BURMAHST EAST SHIPPING ARE IN FACT SUBSIDIARIES OF BURMAH OIL. IT IS DIFFICULT FOR US TO UNDERSTAND WHY THESE TWO COMPANIES HAD TO CONCLUDE A TRANSPORT COMMISSION CONTRACT. AMONG THE SHAREHOLDERS OF THE BURMAHST EAST SHIPPING COMPANY ARE THE FAR EAST TRADING COMPANY, EDNA COMPANY OF HONG KONG. I. SUTOMO, FORMER PRESIDENT OF PERTAMINA, AND KULUMUNDIS, FORMER PRESIDENT OF BURMAH OIL TANKERS COMPANY (ACCORDING TO A REPORT IN THE U.S. ECONOMIC MAGAZINE FORBES). JUDGING FROM THIS, WE MAY WELL THINK THAT BURMAHST EAST SHIPPING COMPANY IS CLOSE TO A "DUMMY" COMPANY. FOR UNKNOWN REASONS, THIS SHIPPING COMPANY WAS DISBANDED IN JULY THIS YEAR.

SUSPICION HAS FALLEN ON ANOTHER ASPECT, THAT IS, THE RELATION BETWEEN THE CHARTERAGE AND THE LNG PRICE. INDONESIAN LNG IS TO BE EXPORTED TO JAPAN AND THE U.S. THE PRICE OF LNG FOR JAPAN IS QUOTED IN CIF WHICH INCLUDES THE INSURANCE PREMIUM AND FREIGHTAGE, WHILE THAT FOR AMERICA IS QUOTED IN FOB. PEOPLE SAY THAT "IT IS CUSTOMARY IN JAPAN TO QUOTE THE IMPORT PRICE IN CIF, LEAVING NO ROOM FOR SUSPICION", BUT A NATURAL QUESTION COMES UP IN OUR MIND "WHY SHOULD THE PRICE OF LNG FOR JAPAN INCLUDE FREIGHTAGE (CHARTERAGE CONSTITUTES ONE FACTOR)?"

ACCORDING TO THE CIRCLES CONCERNED, THE IMPORT PRICE OF INDONESIAN LNG IS US\$1.17 OR US\$1.25 PER 1,000,000 BTU (A LIQUID UNIT). THIS IS EQUIVALENT TO US\$1.07 OR US\$1.15 PER BARREL IN TERMS OF CRUDE OIL. IT IS MUCH LOWER THAN THE US\$12.00 PER BARREL SET BY THE ORGANIZATION OF PETROLEUM EXPORTING COUNTRIES (OPEC) FOR INDONESIAN CRUDE OIL.

IN ORDER TO FACILITATE THIS LNG PROJECT, THE JAPANESE GOVERNMENT HAS SO FAR FURNISHED DLS600 MILLION IN CREDIT WHILE THE PRIVATE SECTOR HAS PROVIDED DLS200 MILLION IN LOANS, WITH THE TOTAL AMOUNTING TO DLS8,100 MILLION. ON THE PRETEXT OF SUBSEQUENT INCREASE IN EXPENSES, THE INDONESIAN SIDE DEMANDED ADDITIONAL LOANS. AS A RESULT OF TALKS BETWEEN MINISTER OF INTERNATIONAL TRADE AND INDUSTRY TOSHIO KOMOTO AND INDONESIAN MINISTER OF TRADE PRAMONO RADJUS ON JUNE 17 THE 8 JUNE 17 THIS YEAR, AN AGREEMENT WAS REACHED THAT JAPAN WOULD FURNISH ADDITIONAL LOANS AMOUNTING TO DLS372 MILLION. AT THAT TIME, IT WAS AGREED THAT "THE BUYER (JILCO) AND PERTAMINA WOULD NEGOTIATE SO THAT THE PORTION OF THE CIF PRICE OF INDONESIAN LNG TO BE EXPORTED TO JAPAN EQUIVALENT TO FOB PRICE WOULD BECOME EQUAL TO THE FOB PRICE OF INDONESIAN LNG FOR THE U.S." THE PEOPLE CONCERNED SAY THAT, THEREFORE, THERE IS NOTHING SUSPICIOUS AT ALL.

IT IS EVIDENT THAT INFLATED LOANS WOULD RESULT IN A HIGH PRICE OF LNG. PEOPLE IN THE ENERGY INDUSTRY ARE CRITICIZING SUCH AN ATTITUDE ON THE PART OF THE JAPANESE GOVERNMENT, SAYING THAT THIS ATTITUDE MIGHT EXERT UNDERSIRABLE EFFECTS ON OTHER LNG PROJECTS CURRENTLY BEING PROMOTED.

A PERSON WELL INFORMED ABOUT SHIPPING INDUSTRY AFFAIRS SAID: "WE HEAR THAT GENERAL DYNAMICS IS COMPLAINING THAT AN LNG TRANSPORT VESSEL, WHICH REQUIRED DLS200 MILLION TO BUILD AT THE TIME THE ORDER WAS PLACED WITH THE COMPANY, REQUIRES DLS355 MILLION TODAY. NOT ONLY THE SHIPBUILDING COST BUT ALSO THE CHARTERAGE AND FREIGHTAGE HAVE GONE UP. IN THIS AGE OF INFLATION, THE PER-VESSEL COST NATURALLY GOES UP AS TIME PASSES ON. IT IS INTERESTING TO LEARN HOW MUCH THE CIF PRICE OF INDONESIAN LNG WILL FINALLY BECOME." THUS HE MADE AN IMPLICATING COMMENT.

HE ADDED THAT THE CHARTERAGE AND FREIGHTAGE ARE THE TWO POINTS WHICH HOLD A KEY TO THE SOLUTION OF THE RELATIONSHIP AMONG THE U.S. (BURNHAM OIL AND GENERAL DYNAMICS), INDONESIA (PERTAMINA) AND JAPAN (JILCO). IN FACT, REPRESENTATIVES OF THESE THREE PARTIES INVOLVED ARE NOW IN TOKYO, CONDUCTING NEGOTIATIONS OVER TERMS AND CONDITIONS OF THE ADDITIONAL CREDIT AMOUNTING TO DLS370 MILLION AS WELL AS OVER THE LNG

1. INDONESIA, FORMER PERTAMINA PRESIDENT SUTOMO WHO WAS AS INFLUENTIAL AS INDONESIAN PRESIDENT SUHARTO, WAS ALWAYS SHROUDED IN A DARK MIST OF SUSPICION. HE WAS UNDER FIRE FOR HIS "IRREGULARITIES". HE JUST RESIGNED LAST SPRING OFFICIALLY, TAKING RESPONSIBILITY FOR THE DELAY IN PAYMENT OF DEBTS OF PERTAMINA. THIS IS ONE OF THE REASONS WHY THE LNG PROJECT IN INDONESIA IS VIEWED WITH SUSPICION. (REPORTERS MASAHIDE ARATAKE AND KENOSUKE TAKEISHI)

UNQUOTE

END MESSAGE

FOLLOWING IS THE ARTICLE APPEARED IN AUGUST 25, 1976 MORNING
EDITION OF YOKIURI SHIMBUN.

QUOTE

"JAPAN HAS NO RELATION TO SUSPICION IN CONNECTION WITH CHARTER OF
 LNG TANKERS"

- MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY -

THE SPOKESMAN OF MINISTRY OF INTERNATIONAL TRADE AND
 INDUSTRY SAID ON AUGUST 24TH: JAPAN HAS NO DIRECT RELATION
 TO THE SUSPICION IN CONNECTION WITH THE CHARTER OF LNG TANKERS
 ARISING AT U.S. SECURITIES AND EXCHANGE COMMISSION (SEC) IN
 REGARD TO LIQUEFIED NATURAL GAS (LNG) IMPORT PROJECT FROM
 INDONESIA.

ACCORDING TO THE EXPLANATION GIVEN BY MITI, JAPANESE
 ADDITIONAL LOAN OF 370 MILLION DOLLARS, INCLUDING THE FINANCING
 OF EXPORT IMPORT BANK OF JAPAN FOR LNG PROJECT SHALL BE USED
 FOR LNG LAND EQUIPMENT AND FUNDAMENTAL EQUIPMENT AND NOT FOR THE
 CONSTRUCTION AND CHARTER OF LNG TANKERS. FOR THIS REASON,
 JAPANESE ADDITIONAL LOAN HAS NO RELATION TO THE SUSPICION
 CONCERNING LNG TANKERS.

THE IMPORT PRICE OF LNG, THEY SAY, SHALL BE FIXED ON CIF
 (LANDING PORT PRICE INCLUDING INSURANCE AND FREIGHT) BASIS, AND
 ALTHOUGH THEY ARE INTERESTED IN THE COMPANIES WHICH SHALL
 CONSTRUCT OR CHARTER SUCH LNG TANKERS, SUCH IS THE PROBLEM OF
 INDONESIAN SIDE. ON THE PART OF JAPAN, ONE OF THE CONDITIONS
 UNDER WHICH ADDITIONAL LOAN IS PERMITTED IS TO STABILIZE CIF JAPAN
 PRICE AND NOT TO MAKE SUCH A PRICE HIGH COMPARED WITH THE EXPORT
 PRICE TO U.S.A. OR OTHERS. JAPAN IS NOW UNDER NEGOTIATION WITH
 INDONESIA AND THERE ARE NO GROUNDS FOR JAPAN TO INTERFERE
 DIRECTLY IN THE PROBLEM OF THE CHARTER OF LNG TANKERS.

UNQUOTE

FOLLOWING IS THE ARTICLE APPEARED IN AUGUST 24, 1976 EVENING
EDITION OF YOKOHAMA SHIMBUN.

QUOTE

"HIGH SHIPPING OFFICIALS" SUSPECTED OF HAVING
RECEIVED YEN900 MILLION IN BRIBES IN CONNECTION
WITH CHARTER OF LNG TANKERS

BURMAH OIL COMPANY CHAIRMAN TESTIFIES BEFORE
US COURT

(NEW YORK, AUGUST 23, 1976--SPECIAL CORRESPONDENT
SAGARA)---COURT TESTIMONY IN NEW YORK REVEALED ON AUGUST 23
THAT HIGH SHIPPING OFFICIALS IN JAPAN RECEIVED DLS3,000,000
(ABOUT YEN900 MILLION) IN BRIBES FROM A. F. DOWD, CHAIRMAN OF
THE BURMAH OIL COMPANY, A MAJOR OIL FIRM IN BRITAIN, IN CONNECTION
WITH CONTRACTS TO CHARTER TANKERS TO BE USED TO TRANSPORT
LIQUEFIED NATURAL GAS (LNG) WHICH JAPAN WILL IMPORT FROM
INDONESIA.

SOME EXECUTIVES OF THE GENERAL DYNAMICS CORPORATION, WHICH
IS NOW BUILDING LNG TANKERS, AND BURMAH OIL COMPANY ARE NOW IN
TOKYO NEGOTIATING WITH THE JAPANESE GOVERNMENT AUTHORITIES ON
CHARTER CONTRACTS AND FOR LOANS FROM THE EXPORT-IMPORT BANK OF
JAPAN. AT A TIME WHEN THE EXISTENCE OF A DUMMY COMPANY PROFITTING
FROM THE CHARTER OF TANKERS AND AN ALLEGED BRIBERY CASE HAVE
BEEN DISCLOSED, MANY PEOPLE IN NEW YORK WONDER WHY THE JAPANESE
GOVERNMENT AND BUSINESS LEADERS ARE SO EAGER TO USE FOREIGN
TANKERS WHOSE COST WILL BE MUCH HIGHER THAN JAPAN'S OWN TANKERS.

U.S. GOVERNMENT AND CONGRESSIONAL AGENCIES CONCERNED,
SUCH AS THE U.S. SECURITIES AND EXCHANGE COMMISSION (SEC), ARE
CONDUCTING SECRET INVESTIGATIONS INTO THE ALLEGED ILLEGAL
BUSINESS TRANSACTIONS BY THE BURMAH OIL COMPANY. INDICATIONS ARE
THAT THE LNG IMPORT ISSUE IS MOST LIKELY DEVELOP INTO ANOTHER
CORRUPTION INVOLVING SHIPPING AUTHORITIES.

THE BRIBERY WAS DISCLOSED DURING NEW YORK ARBITRATION COURT HEARINGS ON LITIGATION BETWEEN THE BURMAH OIL COMPANY AND JOHN WACKAL (PHONETIC), FORMER PRESIDENT OF THE BURMAH OIL TANKERS COMPANY, WHICH IS BURMAH OIL'S SUBSIDIARY.

STANLEY WILSON, PRESIDENT OF THE BURMAH OIL TANKERS COMPANY, AND CHAIRMAN DOWN OF THE BURMAH OIL COMPANY SAID IN COURT THAT DOWN PAID DLS3,000,000 IN BRIBES TO THE "SHIPPING AUTHORITIES IN HIGH POSITIONS IN JAPAN" THROUGH "FONTAS" (PHONETIC) COMPANY IN BERMUDA.

ALTHOUGH IT IS NOT KNOWN WHETHER THE AUTHORITIES REFERRED TO BY THEM ARE IN "SINGULAR" OR IN "PLURAL", MANY PEOPLE BELIEVE THAT THEY ARE IN "PLURAL". NEITHER IS IT KNOWN WHETHER "THE SHIPPING AUTHORITIES IN HIGH POSITIONS" ARE "HIGH-RANKING GOVERNMENT OFFICIALS" OR LEADERS OF THE SHIPPING INDUSTRY.

ACCORDING TO THE TESTIMONY BY DOWN AND WILSON, DLS2,000,000 OF THE MONEY WAS PAID IN CASH AND THE REMAINING DLS1,000,000 IN PROMISSORY NOTES. IT IS SAID THAT "FONTAS" IS A DUMMY COMPANY BEHIND WHICH ARE SOME INFLUENTIAL KOREANS WHO ARE ENGAGED IN LOBBYIST ACTIVITIES FOR THE KOREAN GOVERNMENT IN WASHINGTON.

EXECUTIVES OF THE BURMAH OIL COMPANY ARE NOW IN TOKYO NEGOTIATING WITH THE MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY AND LEADERS OF THE SHIPPING INDUSTRY FOR ADDITIONAL LOANS FROM THE EXPORT-IMPORT BANK OF JAPAN AS WELL AS FOR EARLY CONCLUSION OF CHARTER CONTRACTS WITH TANKER USERS. SOME JAPANESE GOVERNMENT OFFICIALS HAVE BEGUN TO ASSUME A C E E E OFFICIALS HAVE BEGUN TO ASSUME A CAUTIOUS ATTITUDE TOWARDS THE NEGOTIATIONS WITH THE BURMAH OIL COMPANY.

IT WAS ALSO DISCLOSED ON AUGUST 23 THAT A "DUPAY" COMPANY NAMED EDNA COMPANY IN HONG KONG PAID MONEY TO OTHER QUARTERS THROUGH JOHN WACKAL, A FORMER SHIP CAPTAIN, WHO HAD PREVIOUSLY WORKED WITH PERTAMINA OF INDONESIA. EDNA COMPANY HAS BEEN A TARGET OF INVESTIGATION BY OEC ALONG WITH THE FAR EAST OIL TRADING COMPANY IN TOKYO. MANY PEOPLE SUSPECT THAT EDNA COMPANY HAS HAD SOME CONNECTION WITH THE ALLEGED BRIBERY INVOLVING

HIGH CHARTERAGE MOST LIKELY AFFECT IMPORT PRICE

ACCORDING TO A JAPANESE GOVERNMENT SOURCE, EXECUTIVES NOT ONLY OF THE BURMAH OIL COMPANY AND GENERAL DYNAMICS CORPORATION BUT ALSO OF BURMAH EAST SHIPPING COMPANY, A SUBSIDIARY OF BURMAH OIL, AND PERTAMINA OF INDONESIA ARE NOW IN JAPAN, CONDUCTING NEGOTIATIONS.

THEY ARE NEGOTIATING (1) TERMS AND CONDITIONS OF ADDITIONAL LOANS (DLS360 MILLION) WHICH JAPAN HAS EARLIER AGREED TO FURNISH TO INDONESIA, AND (2) THE CHARTERAGE OF TANKERS TO TRANSPORT LNG TO JAPAN FROM INDONESIA.

GENERAL DYNAMICS IS NOW BUILDING SEVEN TANKERS. HOWEVER, SINCE THE BUILDING COST EACH OF THE SIXTH AND SEVENTH TANKERS HAS RISEN TO DLS150 MILLION FROM ORIGINAL DLS100 MILLION RESPECTIVELY, THEY ARE NEGOTIATING WITH THE JAPANESE SIDE IN ORDER TO HAVE THE COST HIKE PASSED ON TO THE CHARTERAGE.

THE IMPORT PRICE OF LNG FROM INDONESIA AT THE MOMENT IS ABOUT DLS2.70 PER 1,000,000 BTU, WHICH IS EQUIVALENT TO ABOUT DLS16.20 PER BARREL IN TERMS OF OIL. IF THE CHARTERAGE SHOULD RISE AS A RESULT OF THE CURRENT NEGOTIATIONS, THE IMPORT PRICE WOULD ALSO RISE, MAKING THE INDOONESIAN LNG A HIGH-COST ENERGY SOURCE.

DENIED BY GOVERNMENT AUTHORITIES

A JAPANESE GOVERNMENT SOURCE DENIED AS INCREDIBLE THE ALLEGATION THAT BRIBES WERE GIVEN TO "JAPANESE SHIPPING AUTHORITIES IN HIGH POSITIONS", ON THE GROUND THAT IT WAS NOT CLEAR WHY SUCH BRIBES WERE NECESSARY.

UNQUOTE

FOLLOWING IS THE ARTICLE APPEARED IN AUGUST 25, 1976 EVENING
EDITION OF YONHUI SHINCHU.

QUOTE

JAPANESE HIGH OFFICIALS SUSPECTED OF HAVING RECEIVED
 BRIBES IN CONNECTION WITH LNG THROUGH KOREAN BIG SHOT

KOREAN BIG SHOT CAME TO JAPAN IMMEDIATELY
 BEFORE ADDITIONAL LOANS APPROVED

(NEW YORK, AUGUST 24--SPECIAL CORRESPONDENT SAGARA)--
 IT WAS DISCLOSED ON AUGUST 23 THAT "JAPANESE SHIPPING AUTHORITIES
 IN HIGH POSITIONS" RECEIVED DLS3,000,000 (APPROXIMATELY YEN900
 MILLION) IN BRIBES FROM THE CHAIRMAN OF THE BURMAH OIL COMPANY,
 A MAJOR BRITISH OIL FIRM, IN CONNECTION WITH JAPAN'S IMPORT OF
 LIQUEFIED NATURAL GAS (LNG) FROM INDONESIA. A RELIABLE SOURCE
 IN NEW YORK WHO IS AN AUTHORITY ON THE SHIPPING INDUSTRY REVEALED
 ON AUGUST 24 THAT THE OWNER OF THE FONTAS COMPANY, A DUMMY
 COMPANY OF BERMUDA, THROUGH WHICH THE BRIBES WERE ALLEGEDLY
 PASSED TO JAPANESE SHIPPING AUTHORITIES, IS RAK DONG IL PAK IS
 A LOBBYIST FOR THE KOREAN GOVERNMENT IN WASHINGTON. PAK VISITED
 JAPAN IN SPRING THIS YEAR JUST BEFORE THE JAPANESE GOVERNMENT
 DECIDED TO FURNISH ADDITIONAL LOANS TO FINANCE THE INDONESIAN
 LNG DEVELOPMENT PROJECT.

IT IS SAID THAT PAK REPRESENTS THE INTERESTS OF THE KOREAN
 GOVERNMENT IN THE U.S. HE IS SAID TO KNOW EVERY INCH OF
 KOREAN PRESIDENT PARK CHUNG HEE'S MIND AND INTENTION. HIS
 ACTIVITIES ARE CLOTHED IN A VEIL OF MYSTERY.

AFTER GRADUATING FROM THE FOREIGN STUDIES DEPARTMENT OF
 GEORGETOWN UNIVERSITY IN WASHINGTON, PAK HAS BEEN ENGAGED IN A WIDE
 RANGE OF BUSINESS ACTIVITIES. HE RAN PACIFIC DEVELOPMENT COMPANY
 IN WASHINGTON. IT IS SAID THAT PAK'S ELDER BROTHER IS THE
 PRESIDENT OF A SHIPPING COMPANY IN KOREA.

INDONESIAN MINISTER OF TRADE PRADILO RADIUS CAME TO JAPAN IN APRIL THIS YEAR AND ASKED MINISTER OF INTERNATIONAL TRADE AND INDUSTRY TOSHIO KONO TO FURNISH ADDITIONAL LOANS TO MAKE UP FOR THE SHORTAGE OF FUNDS (APPROXIMATELY 650,000 MILLION) NECESSARY TO FINANCE THE LNG DEVELOPMENT PROJECT UNDERTAKEN BY PERTAMINA, A STATE-OWNED OIL COMPANY OF INDONESIA. IT WAS DISCLOSED ON AUGUST 24 THAT PAK VISITED JAPAN AROUND THE TIME OF RADIUS' VISIT TO JAPAN. AT THAT TIME, PAK WAS ACCOMPANIED BY FORMER VICE-PRESIDENT AGNEW WHO SERVED UNDER PRESIDENT RICHARD NIXON WHO WAS CUSTODIED IN CONNECTION WITH THE WATERGATE SCANDAL.

THE JAPANESE GOVERNMENT'S DECISION ON FURNISHING ADDITIONAL LOANS TO INDONESIA WAS MADE FINAL AT THE KONO-TORUJI MEETING ON JUNE 17. IT WAS DECIDED THAT JAPAN WOULD FURNISH 650,000 MILLION TO INDONESIA.

AMERICAN ECONOMIC MAGAZINE NAMES
FORMER PRESIDENT OF PERTAMINA

(WASHINGTON, AUGUST 24--SPECIAL CORRESPONDENT YOKOYAMA)
— THE U.S. ECONOMIC JOURNAL FORBES GAVE TWO AND A HALF PAGES OF ITS SEPTEMBER 1ST ISSUE TO A FEATURE ARTICLE ON THE CONSTRUCTION OF TANKERS TO TRANSPORT INDONESIAN LIQUEFIED NATURAL GAS (LNG). IN THIS FEATURE ARTICLE, THE JOURNAL REFERRED TO T. GUTORO, FORMER PRESIDENT OF PERTAMINA, STATE OIL COMPANY OF INDONESIA, AND KULURUNDIS, FORMER PRESIDENT OF THE BURNAH OIL TANKERS COMPANY, WHO IS SAID TO BE AN INFLUENTIAL FIGURE IN INTERNATIONAL SHIPPING CIRCLES.

THE JOURNAL POINTED OUT THAT THESE TWO PERSONS ARE AMONG THE SHAREHOLDERS OF THE LORANET EAST SHIPPING COMPANY, ONE OF THE "BURNER" COMPANIES SPECIALLY SET UP FOR LNG TRANSACTIONS AROUND INDONESIA, OWNED BY PERTAMINA OIL COMPANY.

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ACCORDING TO THE FEDERAL MARITIME COMMISSION OF THE U.S. DEPARTMENT OF COMMERCE, 57.7-2/3 OF SHARES OF BURMAHST EAST COMPANY ARE HELD BY ITS PARENT COMPANY BURMAH OIL, BUT THE NAMES OF THE REMAINING SHAREHOLDERS ARE UNKNOWN.

FORBES REPORTED THAT PEOPLE WELL INFORMED IN THE AFFAIRS OF INTERNATIONAL SHIPPING UNANIMOUSLY HOLD THE VIEW THAT SUTONG AND KULUKUNDIS MANIPULATED INDONESIA'S LNG EXPORT PROGRAM FROM BEHIND AND THAT BURMAHST EAST SHIPPING'S ROLE WAS TO BRIBE OFFICIALS OF FOREIGN GOVERNMENTS IN ORDER TO MATERIALIZE THE INDONESIAN LNG EXPORT PROGRAM.

UNQUOTE

FOLLOWING IS THE ARTICLE APPEARED IN AUGUST 11, 1976 OF
YOKIUNI SHINBUN.

"GOVERNMENTAL INVESTIGATION UPON THE SUSPICIONS ON LNG"
"MOVEMENT OF JAPANESE EMBASSY AT WASHINGTON."

THE GOVERNMENT SOURCES STATED ON 25TH THAT "THE INVESTIGATION HAS BEEN STARTED BY THE JAPANESE EMBASSY AT WASHINGTON" ABOUT THE SUSPICIONS HELD ON THE LIQUEFIED NATURAL GAS TO WHICH A GREAT ATTENTION IS BEING PAID FOR IT SEEMS TO BECOME ANOTHER CASE OF ROCKNEED SCANDAL, AND DEFINED THAT THE GOVERNMENT HAS SETTED OUT TO BRING THE MATTER TO LIGHT.

THE SOURCE REMARKED ON THE SUMIHA OIL TANKERS COMPANY, SAID TO BE THE WIREPULLER OF INTERNATIONAL SHIPPING CIRCLES, THAT "IT IS A COMPANY WHICH GREW UP IN A SHORT TIME AND THERE HAD BEEN DOUBTFUL RUMOURS SEVERAL TIMES BEFORE. THIS RUMOUR MIGHT COME OUT TO BE A REAL FACT BEFORE LONG FOR THE VARIOUS RUMOURS ARE GETTING ABOUT AND BLOWING OVER, AS THE SAME WAY AS THE ROCKNEED SCANDAL HAS BEEN TALKED UPON SINCE SOMETIME IN NOVEMBER LAST YEAR AND HAS BROKEN OUT AT THIS FEBRUARY." THIS SUGGESTS IT IS QUITE POSSIBLE FOR THE SUSPICIONS ON LNG TO DEVELOP INTO A SCANDAL (CASE).

BUT, THE SOURCE ADDED "AS FOR THE HIGH OFFICIALS TALKED TO BE RELATED WITH THE MATTER, IT DOES NOT SEEM TO FULLY COINCIDE WITH THE FACTS" AND THAT IS WHY THE JAPANESE EMBASSY AT WASHINGTON STARTED TO INVESTIGATE TO CLARIFY THE FACTS EARLY.

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HOWEVER, THE SOURCE STATED ABOUT RELATIONS BETWEEN JAPANESE GOVERNMENT AND THE SUSPICIONS ON LNG THAT:

(1) THE NEGOTIATION ABOUT THE LOANS FROM JAPAN HAS BEEN CONCERNING WITH HARBOUR FACILITIES FOR SHIPPING IN BORNEO AND SUMATERA AND GOING ON WITH PERTAMINA SINCE LAST SPRING.

(2) AFTER THE CLARIFICATION OF INJUSTICE (TAKEN PLACE) BY PERTAMINA, THE NEGOTIATION WAS CHANGED TO BE HELD WITH THE INDONESIAN GOVERNMENT.

(3) THE LOANS FROM JAPAN'S SIDE IS A LOAN OF WHICH 70 - 80-0/0 IS SHARED BY THE AGENCY WHICH IS THE ATTENDANT OFFICE AND IS MADE UP FROM FIVE PRIVATE COMPANIES, SO THE JAPANESE GOVERNMENT IS NOT FINANCING IT, EMPHASISING THAT THE GOVERNMENT HAS NOTHING TO DO WITH THE SUSPICIONS ON LNG.

UNQUOTE

FOLLOWING IS THE ARTICLE APPEARED IN AUGUST 27, 1976 MORNING
EDITION OF YOKOHAMA SHIMBUN

QUOTE

"LNG OF INDONESIA"

"IMPOSSIBLE TO IMPORT ON NEXT MARCH"

EFFECTED BY DOUBTS?

THE CONSTRUCTION OF AN EXPORT BASE IS DELAYED

ACCORDING TO THE INFORMATION ON THE 26TH FROM JAPANESE GOVERNMENT AND THE OIL INDUSTRY, THE START OF IMPORT LNG WHICH JAPAN WILL IMPORT FROM INDONESIA IS SURELY DELAYED MORE THAN TWO MONTHS. THIS SEEMS NOT ONLY BECAUSE THE CONSTRUCTION OF LNG EXPORT BASE IN INDONESIA IS DELAYED TO A GREAT EXTENT BUT THE BREAKING COVER OF DOUBTS IN AMERICA CENTERING AROUND THE TANKER CHARTERS FOR IMPORTING LNG IS EFFECTED. IT IS INEVITABLE THAT THE CRITICISM AGAINST SUCH A CARELESS PLAN SHOULD BE RAISED WITH BREAKING COVER OF DOUBTS ALL THE MORE BECAUSE AN ENORMOUS LOAN OF US\$1,470 MILLION INCLUDING GOVERNMENT'S IS ENFORCED OR PROMISED AS THE GREATEST PROJECT OF ENERGY DEVELOPMENT/IMPORT IN OUR COUNTRY.

THE LNG IMPORT PLAN, WHICH IS TO IMPORT 7,500,000 TON A YEAR AT THE BASE OF THE NORMAL YEAR FOR 20 YEARS, BEGINS BY IMPORTING 3,000,000 TON A YEAR FROM NEXT MARCH. FOR THIS, IN PADANG (?) AREA OF EAST SUMATRA, LNG EXPORT BASE IS CONSTRUCTING IN CHARGE OF BENTEL LTD. OF AMERICA BUT UNDER THE INFLUENCE OF THE RISING COST OF CONSTRUCTION BY INFLATION AFTER OIL CRISIS AND THE FINANCIAL FAILURE OF PERTAMINA (INDONESIAN PUBLIC OIL COMPANY), THE COMPLETION OF AN EXPORT BASE IS SURELY DELAYED A FEW MONTHS BEHIND TIME.

ADDITION TO THIS, DUE TO THE RECENT BREAKING COVER OF DOUBTS IN 'DOUBT COMPANY' AND A DRIVE BY THE INVESTIGATION OF AMERICAN GOVERNMENT AND CONGRESS CENTERING AROUND THE TANKER CHARTERS FOR IMPORTING LNG. LNG TANKERS WILL NOT BE READY FOR START OF IMPORTING SCHEDULED NEXT MARCH AND MOREOVER IT IS QUITE POSSIBLE TO BE DELAYED MORE THAN TWO MONTHS.

IN CASE OF DELAY OF START OF IMPORTING, THE FIVE COMPANIES, NAMELY, OSAKA GAS, KYUSHU ELECTRIC, KANSAI ELECTRIC, CHUGU ELECTRIC, NIPPON STEEL, WHICH ARE INVESTORS OF LNG DEVELOPMENT AND IMPORT AS WELL AS PURCHASERS, WILL BE GREATLY AFFECTED. ESPECIALLY IN CASE OF EACH ELECTRIC COMPANIES AS THEY PLANNED WITH WEAVING THE IMPORT OF INDUSTRIAL LNG INTO COSTING AND FUEL PLAN WHEN THE RATE INCREASE OF THE ELECTRICITY IT IS INEVITABLE THAT THIS PLAN SHOULD BE UPSET AND SPRING BACK TO THE COST OF ELECTRICITY. OSAKA GAS, WHICH PLANS TO APPLY FOR THE RATE INCREASE AT THE YEAR-END, IS THE SAME AS EACH OF ELECTRIC COMPANIES.

PRESENTLY AT THE NEGOTIATION HELD IN TOKYO AMONG PERTAMINA, BURMAH OIL TANKERS LTD. WHICH IS IN CHARGE OF CHARTERING, GENERAL DYNAMICS CORP. WHICH IS IN CHARGE OF CONSTRUCTION OF TANKERS AND REPRESENTATIVES OF OUR USERS, IT IS SAID THAT TANKER CHARTERING WILL BE ADAPTED TO BE IN TIME FOR NEXT MARCH START OF IMPORTING AS SCHEDULED. BUT SOURCES POINT OUT THAT IF THE CONSTRUCTION OF AN EXPORT BASE IS DELAYED, THE RESULT WILL BE THE SAME BECAUSE LNG CANNOT BE IMPORTED EVEN THOUGH TANKERS ARE CHARTERED AS SCHEDULED. IT IS OPEN TO CRITICISM AS A CHARTERED PLAN FOR A LARGE SIZE OF NATIONAL PROJECT CONSIDERING THE PRESENT COST OF DOUBTS AND THE DELAY OF PLANNING.

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"PHOTO IS A FORGE"

(THE FOREIGN MINISTER OF INDONESIA
SATA, ON THE 26TH BY KANEYUKI CORRESPONDENT)

IN, THE FOREIGN MINISTER OF INDONESIA, NARIK TOTALLY
DOUBTS UPON THE INDONESIAN SIDE, CONCERNING THE
THE TANKERS EXPORTING LIQUEFIED NATURAL GAS
INDONESIA TO JAPAN.

FOREIGN MINISTER ON THIS DAY ANSWERING THE QUESTIONS
LESSON, SAID "THIS MATTER MUST HAVE BEEN MADE UP
INDONESIA (ORDENEN) BY THE PEOPLE CONCERNED OF LOSERS
MANAGEMENT" AND DETERMINED THAT THE RELATIONS OF
SATA HIGH OFFICIALS TO THIS MATTER, TOO, MUST BE A FORGE.

ON OTHER HAND, MR. PIET TANYONG WHO TOOK OVER THE
OF THE PERTAMINA, WHICH IS ONE OF THE MAIN DOUBTFUL
MENTIONED "NO COMMENT" ONLY ABOUT THIS MATTER, AND
OF HIS PERSONAL VIEW.

QUOTE

IMPORTATION OF INDONESIAN LIQUEFIED NATURAL GAS
COMPLICATION AS TO CONSTRUCTION PRICE OF TANKERS

AMERICAN COMPANY, WHO RECEIVED THE ORDER, REQUIRING PRICE INCREASE.
INVESTIGATION INVOLVED AS TO THE SUITABILITY OF SUBSIDY.

GOVERNMENT SPOKESMAN DISCLOSED ON 25TH THAT A BIG PROBLEM OCCURRED AS TO THE TANKERS FOR PLANNED IMPORTATION OF INDONESIAN LNG (LIQUEFIED NATURAL GAS), WHICH IS OUR BIGGEST ENERGY-RELATED PROJECT, AND THAT REPRESENTATIVES OF FOUR CONCERNED COMPANIES, NAMELY, FIVE JAPANESE USERS (THREE ELECTRIC POWER COMPANIES KANSAI, CHUBU AND KYUSHU, NIPPON STEEL AND OSAKA GAS), PERTAMINA (INDONESIAN STATE-OWNED OIL COMPANY), BURMAH OIL GROUP (BRITAIN) AND GENERAL DYNAMICS (U.S.), GATHERED IN TOKYO AND MAKE LAST MINUTE ADJUSTMENT WITH THE TIME LIMIT OF 31ST. THIS IS BECAUSE GENERAL DYNAMICS, RECEIVED THE ORDER FOR CONSTRUCTION OF LNG TANKERS, DEMANDED THE INCREASE OF THE CONSTRUCTION PRICE OF CERTAIN TANKERS BY TWICE AS MUCH AS BEFORE IN CONJUNCTION WITH THE DELAY IN CONSTRUCTION AND THE PROBLEM AS TO AMERICAN DOMESTIC AID IN BUILDING SHIPS. IF THIS DEMAND SHOULD BE ACCEPTED, THE COMPARATIVELY HIGH LNG IMPORT PRICE COMPARED WITH INTERNATIONAL AVERAGE FROM THE BEGINNING OF ITS PLAN WOULD ABASTICALLY INCREASE BY MORE THAN 10 MILLION YEN PER ANNUM. THOUGH THE USER SIDE PERSISTS "IT MIGHT CAUSE THE PRICE INCREASE OF ELECTRIC CHARGE AND WE CAN NEVER ACCEPT IT." IF THIS NEGOTIATION BREAKS DOWN AND AFFECTS THE COMMENCEMENT OF TRANSPORTATION WHICH IS SCHEDULED NEXT MARCH, THERE IS A RISK WHICH MIGHT CAUSE A TROUBLE ON ADDITIONAL LOAN BY EXPORT-IMPORT BANK TO PERTAMINA DETERMINED THIS JUNE. MOREOVER, IN THE UNITED STATES, S.E.C. (SECURITIES AND EXCHANGE COMMISSION) ENTERED THEIR INVESTIGATION REGARDING THE SUBSIDY FOR TANKER CONSTRUCTION AND ITS DEVELOPMENTS WILL BE WATCHED.

ADDITIONAL FREIGHT CHARGE 10 BILLION YEN PER ANNUM
JAPANESE SIDE IS DEFEYING AND NEGOTIATING

WITH RESPECT TO THE TRANSPORTATION OF LNG, PERTAMINA ENTERED
INTO THE TRANSPORTATION AGREEMENT WITH "BURMAHST EAST SHIPPING"
BURMAH OIL'S SECOND TIER SUBSIDIARY, AND BURMAH OIL GROUP WILL A-216
TAKE THE RESPONSIBILITIES. BURMAH OIL GROUP ORDERED THE CONSTRUCTION
OF FIVE TANKERS TO THE GENERAL DYNAMICS AND THE PRICE PER
VESSEL WAS 90 MILLION DOLLARS.

AT THE TIME WHEN FIVE JAPANESE USERS AND PERTAMINA SIGNED
IN 1973, JAPANESE SIDE ESTIMATED THE CONSTRUCTION PRICE OF
SEVEN TANKERS AS 90 MILLION DOLLARS PER VESSEL. TRANSPORTATION
CHARGE WILL BE 32 CENTS PER ONE MILLION BTU (CALORY UNIT) BASED
ON THIS ESTIMATION. HOWEVER, PRIOR TO THIS, GENERAL DYNAMICS
RECEIVED AN ORDER TO BUILD TANKERS FROM OTHER COMPANY FOR THE
TRANSPORTATION OF ALGERIAN LNG AND THIS IS UP IN THE AIR BECAUSE
U.S. GOVERNMENT DID NOT PERMIT THE IMPORTATION OF LNG FROM
ALGERIA.

S.E.C. ENTERED THEIR INVESTIGATION OF FIVE TANKER SHIPS
WHICH IS ORDERED BY BURMAH OIL GROUP AS TO RIGHT AND WRONG IN
SUPPLEMENT OF FINANCIAL AID BECAUSE "BURMAHST EAST SHIPPING"
HAS FOREIGN CAPITAL.

WHEN BURMAH OIL GROUP ORDERED ADDITIONAL TWO TANKERS
EARLY THIS YEAR UNDER THOSE CIRCUMSTANCES, GENERAL DYNAMICS SIDE
DEMANDED THE PRICE OF 150 MILLION DOLLARS PER VESSEL FOR THE
REASONS, AMONG OTHERS, THAT (1) ALGERIA RELATED TANKERS ARE UP IN
THE AIR AND BURDENSOME, AND THAT (2) AS S.E.C. STARTED THEIR
INVESTIGATION, SUBSIDIES FOR ADDITIONAL TWO TANKERS ARE NOT
EXPECTED.

TWO PARTIES HAVE REACHED THE AGREEMENT BECAUSE BURMAH CAN SHIFT
IT OVER TO ITS TRANSPORTATION CHARGE.

HOWEVER, FIVE JAPANESE USERS REQUESTED PERTAMINA
SIDE TO MAINTAIN THE EXISTING TRANSPORTATION CHARGE ON THE
GROUND THAT IT WOULD OTHERWISE BE MORE THAN 10 CENTS INCREASE
OF TRANSPORTATION CHARGE PER ONE MILLION BTU OFFERED THEM AND
PROPOSED TO CHARTER FROM SHIPPING COMPANIES OTHER THAN BURMAH
OIL GROUP. THUS, FOUR PARTY CONFERENCE HAS CONTINUED IN TOKYO
SINCE THE MIDDLE OF THIS MONTH.

NNNNN "CORRECTION LAST PARA FROM LAST 4TH LINE

--- ONE MILLION BTU AND OFFERED THEM---

AUGUST 26, 1976 EDITION OF MAINICHI SHIMBUN

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NOW THE RELATION TO EXPORT-IMPORT BANK'S FINANCING TO PERTAMINA, DETERMINED IN THIS JUNE, BECAME A TROUBLE. (JAPANESE) GOVERNMENT MAY BE CONDITIONING THAT "THEY WILL NOT PROVIDE (ANY FINANCING AID) IF THE PRACTICE OF IMPORT DELAYED AFTER MARCH", CONSIDERING THAT IN CASE WE CANNOT IMPORT LNG FROM NEXT MARCH THE LNG-POWER PLANT, WHICH IS UNDER CONSTRUCTION WITH INVESTMENT OF APPROX. 200 BILLION YEN BY FIVE (JAPANESE) USERS, WON'T BE IN OPERATION. FOR THIS REASON IF THIS NEGOTIATION BREAKS DOWN THERE WILL BE LESS CHANCE TO GET FINANCIAL AID FROM EXPORT-IMPORT BANK.

AMONG PEOPLE CONCERNED IT IS SAID THAT THESE PROBLEMS OCCURRED BECAUSE OF THEIR ROUGH CONTRACTS WITH PERTAMINA. ON THE OTHER HAND, THERE IS A "BLACK GOSSIP" AND ALSO POSSIBILITY THAT PROBLEMS IN RESPECT OF HISTORY UP TO THE CONTRACT AND THE METHOD OF FINANCING TO PERTAMINA MIGHT COME OUT AS A DIFFERENT CASE.

THIS PROJECT FOR EXPLOITATION AND IMPORTATION OF INDONESIAN LNG IS FOR THE CO-DEVELOPMENT AMONG JAPAN, U.S. AND INDONESIA OF A BIGGEST AMOUNT OF NATURAL GAS IN THE WORLD, WHICH EXISTS IN EASTERN KALIMANTAN AND NORTHERN SUMATERA, AND FOR THE PROVISION TO JAPAN AND TO THE UNITED STATES AFTER LIQUEFICATION. THE IMPORT AMOUNT TO JAPAN WOULD BE 7,500,000 TONS YEARLY FOR ABOUT 20 YEARS SINCE MARCH, 1973. AND JAPAN PROVIDED AN ENORMOUS AMOUNT OF CREDIT AS 1.4 BILLION DOLLARS INCLUDING ADDITIONAL AMOUNT AS AGREED IN THIS JUNE.

THIS PROJECT IS A NATIONAL PROJECT PROCEEDED BY THE CO-OPERATION OF GOVERNMENT AND THE INDUSTRIAL CIRCLES. JUST AFTER THE OIL SHOCK IN NOVEMBER, 1973 MR. YOSHIHIKO MOROZUMI, FORMER PERMANENT VICE MINISTER OF INTERNATIONAL TRADE AND INDUSTRY (THE PRESENT GOVERNOR OF ELECTRIC RESOURCES DEVELOPMENT

(4)

AUGUST 26, 1976 EDITION OF MAINICHI SHIMBUN

PUBLIC CORPORATION) WENT TO INDONESIA AS A SPECIAL ENVOY OF THE GOVERNMENT AND MADE A BASIC CONTRACT WITH MR. RADIUS, MINISTER OF COMMERCE. BASED UPON THIS FIVE USER COMPANIES ENTERED INTO A FORMAL CONTRACT IN DECEMBER OF THE SAME YEAR WITH PERTAMINA, THE INDONESIAN STATE-OPERATED OIL COMPANY. NEXT FOLLOWING JANUARY IN 1974 THE PRIME MINISTER TANAKA VISITED INDONESIA AND MADE IT ASSURED. AFTER THAT, WITH THE FIVE COMPANIES OF USERS AND THE SEVEN TRADING HOUSES LIKE NISSHO Iwai, MITSUI BUSSAN, MITSUBISHI SHOJI, MARUBENI, C. ITC, SUMITOMO SHOJI, TAKEN AS THE LEADERS, JAPAN INDONESIA LNG (THE PRESIDENT KOSHICHI UENO) IS ESTABLISHED AS A RECEPTABLE COMPANY.

UNQUOTE

BRIBERY FIRM 'BRIDRO' JAPANESE OVER SHIPS

NEW YORK (NY YOMIURI CORRESPONDENT MUNIC SASAKI) - COURT TESTIMONY IN NEW YORK REVEALED MONDAY THAT HIGH SHIPPING OFFICIALS IN JAPAN RECEIVED YEN 938 MILLION IN BRIBES FROM THE BURMAH OIL COMPANY, A MAJOR OIL FIRM IN BRITAIN.

THE BRIBERY WAS DISCLOSED DURING HEARINGS IN LITIGATION BETWEEN THE BURMAH OIL COMPANY AND ITS SUBSIDIARY COMPANY BURMAH OIL TANKERS COMPANY.

SOME EXECUTIVES OF THE GENERAL DYNAMICS CORPORATION, WHICH HAS A CONTRACT TO BUILD TANKERS FOR THE BURMAH OIL COMPANY, ARE NOW IN TOKYO CONDUCTING NEGOTIATIONS WITH THE JAPANESE GOVERNMENT ON CHARTER CONTRACTS AND NEGOTIATING LOANS FROM THE EXPORT-IMPORT BANK OF JAPAN.

FOLLOWING DISCLOSURE OF THE ALLEGED BRIBERY, MANY PEOPLE IN NEW YORK WONDER WHY THE JAPANESE GOVERNMENT AND BUSINESS LEADERS ARE SO EAGER TO USE FOREIGN TANKERS, WHOSE COST WILL BE MUCH HIGHER THAN JAPAN'S OWN TANKERS.

THE TANKERS TO BE CHARTERED WILL BE USED TO EXPORT LIQUEFIED NATURAL GAS (LNG) FROM PERTAMINA, INDONESIA'S NATIONAL OIL EXPORT AGENCY, TO JAPAN.

THE SEC SECURITIES AND EXCHANGE COMMISSION (SEC) THE US GOVERNMENT AND THE US CONGRESS ARE CONDUCTING SECRET INVESTIGATIONS INTO THE ALLEGED ILLEGAL BUSINESS PRACTICES OF THE BURMAH OIL COMPANY.

DATE'S DISCLOSURE IN THE ...

COURT TESTIMONY INDICATED THAT
ALLIGATION WOULD MOST LIKELY DEVELOP INTO ANOTHER CORRUPTION
E INVOLVING JAPAN.

WILEY WILSON, PRESIDENT OF THE BURNHAM OIL TANKERS COMPANY, ...
A.A.F. DOWN, CHAIRMAN OF THE BURNHAM OIL COMPANY, SAID IN COURT: THE
AT DOWN PAID DLS 3,000,000 TO HIGH SHIPPING OFFICIALS IN THE
PAID THROUGH A COMPANY IN BERMUDA. IT IS NOT IMMEDIATELY
OWN IF "OFFICIALS" INDICATES MORE THAN TWO GOVERNMENT
FICIALS IN JAPAN.

FORMED SOURCES SAID, HOWEVER, THAT IT WAS CERTAIN THAT MORE
CORRUPT GOVERNMENT OFFICIALS WERE INVOLVED IN THE
CORRUPTION.

CORDING TO THE TESTIMONY BY DOWN AND WILSON, DLS 2,000,000
THE MONEY WAS PAID IN CASH AND THE REMAINING DLS 1,000,000
PROMISSORY NOTES THROUGH "FONTAS" COMPANY IN BERMUDA.
IS BELIEVED THAT SOME INFLUENTIAL KOREAN LOBBYISTS IN WASHINGTON
BEHIND THE "FONTAS" COMPANY.

WAS ALSO DISCLOSED MONDAY IN NEW YORK THAT A "FONTAS" COMPANY
COMPANY EDNA COMPANY IN HONGKONG, ALONG WITH THE FAR EAST OIL
TRADING COMPANY, PAID MONEY ALONG SIMILAR ROUTES THROUGH
DOWN ROSE, A FORMER SHIP'S CAPTAIN WHO HAD PREVIOUSLY WORKED
IN BERMUDA.

NINETY-FOURTH CONGRESS
 Congress of the United States
 House of Representatives
 COMMITTEE ON GOVERNMENT OPERATIONS
 2157 Rayburn House Office Building
 Washington, D.C. 20515

NEWS RELEASE

The House Committee on Government Operations has received certain allegations concerning the General Dynamics liquidified natural gas tanker program, and has had some discussions about them with the Maritime Administration. Congressman Jack Brooks (D-Tex.), Chairman of the Committee, said today.

"On the basis of these discussions, it has not yet been determined whether there is need for further committee action," Brooks said.

The Committee has requested further information from the Maritime Administration and has asked the General Accounting Office to review the entire ship construction loan guarantee program as it is presently being operated. The committee is awaiting responses to these requests.

Copies of the letters to the Maritime Administration and General Accounting Office are attached.

BEST COPY AVAILABLE

NINETY-FOURTH CONGRESS

Congress of the United States

House of Representatives

LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM 3373

WASHINGTON, D.C. 20543

August 2, 1975

Mr. Elmer B. Staats
 Comptroller General of the United States
 General Accounting Office Building
 441 G Street, N.W.
 Washington, DC 20543

Dear Mr. Staats:

Title XI of the Merchant Marine Act of 1936, as amended, provides for federal construction and mortgage insurance for vessels constructed in the United States. Currently, there are almost \$5 billion in U.S. government mortgage guarantees outstanding out of a total authorized program amount of \$7 billion.

Because of the increasing size and complexities of the Title XI program, I would appreciate the General Accounting Office thoroughly reviewing the operation and administration of this program by the Maritime Administration to determine whether the intent of Congress is being successfully met in furthering the development of our maritime industry in an efficient manner and that the government is adequately protected. Special emphasis should be given to the desirability and real costs of allowing leverage leasing and whether all applicants receiving coverage under the program actually qualify by law for such coverage.

Your early attention to this request will be appreciated.

Sincerely,

JACK BROOKS
 Chairman

NINETY-FOURTH CONGRESS

Congress of the United States

House of Representatives

LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM 3-773

WASHINGTON, D.C. 20515

August 3, 1975

Honorable Robert J. Blackwell
 Assistant Secretary for Maritime Affairs
 Maritime Administration
 Main Commerce Building
 Washington, D.C. 20230

Dear Mr. Blackwell:

As you know, the Committee was asked to inquire into the Maritime Administration's conditional commitment to guarantee the financing of five ships for use in transporting LNG from Indonesia to Japan. In connection with this inquiry, Harad's staff has met several times with the committee staff in order to provide information.

While this information has been helpful, I would appreciate your answering the two following questions:

1. What will the liability of the United States be after guarantees have been made, if subsequent inquiry reveals that the citizenship requirements have in fact been violated?
2. Does Harad have any evidence of foreign control of the U.S. companies or ships involved at any time? If so, what is the United States liability?

Your early response will be appreciated.

Sincerely,

JACK BROOKS
 Chairman

1969	48%	20	1968	61	38%
1967	53%	17%	1966	24%	12%

RECENT DIVIDENDS— Com. \$1 par:5					
1976 (to June 30)					0.30
1975	0.60	1974	0.50	1973	↑
1972	10.25	1971	10.75	1970	0.50
1969-68	0.50	1967	0.25	1966	0.50

†In 1971, \$0.25 bef. 4% stk. of record Dec. 30 '70 (pd. Jan. 20, 1971); in 1972, \$0.25 bef. 2% stk. of record Dec. 29, 1972 (pd. Jan. 15, 1973); in 1973, 5% stk. of record Dec. 28, 1973 (pd. Jan. 15, 1974).

DIVIDEND RESTRICTIONS— Under terms of debt agreements, \$61,000,000 of the retained earnings at Dec. 31, 1975, was available for cash payments on or for Com. Agreements also require maintenance of working capital of \$6,000,000.

EARNINGS AND FINANCES

AUDITORS— Arthur Andersen & Co., NYC
CONSOL. EARN., Y-E Dec. 31: Thou. \$

	Total Op. Revs.	Oper. Inc.	Depr. Amort.	Inc. Taxes
1975	309,378	66,984	22,743	12,337
1974	309,646	68,921	20,281	15,130
1973	138,529	39,568	13,189	4,828
1972	119,952	29,656	13,518	1,486
1971	104,592	30,182	10,860	3,499
1970	114,941	33,204	10,416	5,375
1969	90,545	30,350	6,920	6,778
1968	63,710	24,010	5,709	4,825
1967	18,505	15,197	2,332	3,389
1966	13,630	11,011	2,023	1,996

*Bef. extraord. items (Thou. \$): 1975, dr11,000 or \$1.60.

Sh. earns. are as reported by Co.

Annual Report—Consol. Inc. Acct., Yrs. End.
Dec. 31: Thou.\$

	1975	1974
Sales of crude oil		
gas etc.	255,106	217,428
Coal revs.	51,186	88,632
Oth. op. revs.	3,086	3,586
Total revs.	309,378	309,646
Cost of sales	223,636	223,731
Sell., gen. & adm.		
exp.	18,758	16,994
Oper. income	66,984	68,921
Gain on sale of coal		
subs.	—	23,876
Tot. income	66,984	92,797
Depr., depl. &		
amort.	22,743	20,281
Loss on deval. of Is-		
raeli currency	2,337	2,773
Income taxes	9,441	11,040
Depr. inc. tax	2,896	4,090
Avail. for int.	29,567	54,563
Interest	8,351	11,363
Net income	21,216	43,200
Cash divs.	4,502	3,750
Bal. aft. divs.	16,714	39,450
Sh. earns.:		
*Primary	\$2.83	\$5.76
†Fully diluted	2.73	5.49
Int. Times Earn.	3.54	4.80
*Avg. shs.: 1975 —	7,505,000	1974 —
7,500,000		

†Assuming conversion of debts.
Consol. Bal. Sheet, Dec. 31: Thou.\$

	1975	1974
Assets—		
Cash	12,455	12,653
Receivables	33,209	65,054
Inventories	95,729	69,187
Tot. curr. assets	141,403	147,894
Investments & advs.	4,951	5,890
*Net property	251,811	218,772
Deferred chgs. etc.	6,386	5,797
Total assets	404,551	378,353
Liabilities—		
Notes pay	70,513	49,377
Curr. debt mat.	5,128	4,946
Accrs. pay. & accrs.	56,604	70,922

Income taxes	1,551	5,217
Tot. curr. liab.	133,796	130,462
Long term debt	61,112	50,642
Adv. payment	11,680	17,520
Depr. inc. tax	22,342	19,448
Depr. income	2,597	4,041
†Com. stk. p. \$1	7,505	7,500
Paid-in surp.	43,012	42,949
Retain. earns.	122,507	175,793
Total liab.	404,551	518,353
Net wkg. cap.	7,607	17,432
Equity com. sh.	\$23.05	\$20.83
*Depr. depl. & am. res.	109,676	85,481
†Shs.:	7,504,956	7,500,146

Burmah Oil Co. Ltd.

CAPITALIZATION (Dec. 31 '75)

LONG TERM DEBT—

	Outstg. (Pnds. String.)
8½% Loan Stock, Aug. 31, 1996	53,927,000
7½% Partly Conv. Loan Stock, 1981-86	15,354,000
5½% Dollar Bonds, Oct. 1, 1988	23,202,000
Other	126,147,000
TOTAL	218,630,000
STOCK—	
	Auth. Shs. Outstg. Shs.
4.2% Cum. 1st Pref.	
One pnd. par	250,000
4.2% Cum. 2nd Pref.	
One pnd. par	750,000
5.6% Cum. Pref.	
One pnd. par	3,000,000
5.075% Cum. Red.	
Pref. One pnd. par	15,000,000
Ord. One pnd. par	181,000,000
BANK BORROWINGS at Dec. 31, 1975, totaled 273,715,000 pounds sterling taken down under agreements with U.S. and Can. banks, with loans guaranteed by Bank of England.	

SALE OF CERTAIN ASSETS— In June, 1976, Co. contracted to sell for \$520,000,000 cash its principal U.S. oil and gas operations, conducted by wholly owned Burmah Oil & Gas Co. and Burmah Oil Development, Inc. to R.J. Reynolds Industries, Inc.

Mar. 29, 1976, Co. sold for some \$180,000,000 its 21% interest in North Sea Ninian Field to the British Govt. Purchase price was subject to change if Co's. interest in Ninian field was to increase or decrease due to certain conditions. Under terms of the agreement, Co. would retain a 50% interest in net amounts that Ninian pipeline and terminal system would earn from carrying oil from other fields.

CORPORATE BACKGROUND

Company and subsidiaries engage in exploration and production of crude oil and natural gas, refining of crude oil, and marketing of finished petroleum products in the United Kingdom, India, Pakistan, Bangladesh, Australia, continental Europe, and the U.S. Group has main oil and gas producing interests in the U.S., Australia, India, and Pakistan; explores for reserves in these countries and in the North Sea and elsewhere; and owns or has interests in oil refineries in India, United Kingdom, Pakistan, and Bangladesh. It also has interests in manufacturing and services ancillary in the oil industry, in light engineering, motoring and cycling sales, in the production of materials used by the building and civil engineering industries, and in a U.S. company conducting research into a process for producing thermonuclear energy by controlled laser driven fusion.

In 1975, oil and gas operations provided 74.9% of net turnover (77.0% in 1974)— 16.4% (12.5%) from U.K. and Erie, 16.7% (15.7%) from Europe, 25.3% (24.5%) from North America, 5.9% (14.1%) from India and Pakistan, and 10.6% (10.2%) from other areas; oil tankers 4.1% (6.1%); and other 21.0% (16.9%).

STATISTICS—

	Crude Oil Produced	Refinery Throughput	Product Sales	Nat Gas Produced
	(Million Tons)	(Mill Tons)	(Mill MCF)	
1975-74	N.R.	N.R.	N.R.	N.R.
1973	21	45	81	134.3
1972	28	50	75	118.4
1971	29	50	71	108
1970	29	45	71	94.5
1969	29	48	68	93
1968	28	40	64	83
1967	28	38	53	75

Note: in 1975-74, Co. was unable to provide comparable figures due to recent process to dispose of its North American assets.

INVESTMENTS Dec. 31, 1975, carried at 114,448,000 pnds. string., including 5,039,658 Ord. stk. units and 99,000 8% (now 5.6% plus tax credit) 1st Pref. Stk. units (both one pnd. each) of British Petroleum Co. Ltd., with an aggregate market value of 29,470,000 pnds. string.

MAJOR SUBSIDIARIES— wholly owned or

noted—
Burmah Oil Trading Ltd.
*Castrol Ltd.
Burmah Industrial Products Ltd.
Rawplug Co. Ltd.
Haffords Ltd.
*Petrocarbon Developments Ltd.
*A/B Svenska Uno-X
Flexibox Ltd.
*Petroleum Supplies and Services Ltd.
Assam Oil Co. Ltd. (India)
Pakistan Petroleum Ltd. (70%)
Anglo-Ecuadorian Oilfields Ltd. (51%)
Bocal Pty. Ltd.
Petroleum Supplies and Services (Bermuda) Ltd.
Major & Co. Ltd.
Burmah Trading N.V. (7% by Co. and 93% by subsidiaries)
*Basin Oil NL (51%)
*Mid-Eastern Oil NL
*Reef Oil NL (67%)
*Vamgas NL (53%)
*Woodside-Burmah Oil NL (55%)
*Woodside Oil NL
*SA des Huiles Castrol (France)
Quinton Hazell (Holdings) Ltd.
*Apex Petroleum Ltd.
J. H. Carruthers & Co. Ltd.
*Standard Motorists Centres Ltd. (England)
*Deutsche Veedol GmbH (W. Germany)
*Tabbert Wohnwagenwerke GmbH (W. Germany)
Company also has several other wholly owned subsidiaries with the names Burmah and Castrol in their titles.

*Interests held by subsidiaries.

PRINCIPAL AFFILIATES—

Candies Ltd. (England) (36.1%)
Santos Ltd. (Australia) (33.9%)
Tinplate Co. of India Ltd. (25%)
Oil India Ltd. (India) (50%)

CAPITAL EXPENDITURES, Yrs. End. Dec. 31:
Thou. pnds. string.—

1975 — 127,213 1974 — 296,837 1973 — 93,642
EMPLOYEES— Dec. 31, 1975, 35,600.

INCORPORATED in Edinburgh, Scotland, May 15, 1902, to acquire business of company of same name (registered 1886). 6,519,462 Ord. shs. One pnd. par and 21,731,540 pnd. string. 7½% Partly Convertible Loan Stock for all stock of Castrol Ltd., primarily a marketer of refined petroleum products.

In Dec., 1968, acquired as of Jan. 1, 1968, Rawplug Co. Ltd., Surrey, England, producer of fixing devices and tools, for 4,860,000 Ord. stock, of which 132,339 was issued after Dec. 31, 1968.

In 1969, acquired Major & Co. Ltd. for 468,200 Ord. shs.; and in late 1969, two of Co's. subsidiaries acquired for cash the petroleum additives business of Monsanto Co.

In 1970, acquired Haffords, Ltd., Birmingham, and motor and cycling retail chain, for 3,405,457 Ord. shs.

In 1971, acquired interests in Reef Oil NL (67%), Basin Oil NL (51%), and Vamgas NL (53%), all located in Australia.

In 1972, acquired thru an exchange offer a majority interest in Quinton Hazell (Holdings) Ltd. By Jan. 26, 1973, such interest had increased to 92.5% of Ord. shs., 99.9% of part paid Ord. shs., and cancellation of all \$1,500,000 9% Conv. Loan Stock outstanding. Consideration was 8,277,539 Ord. shs., warrants to purchase 522,183 Ord. shs., 4,200,240 pnd. string. of 8½% Loan Stock, and 11,330,282 pnd. string. cash. Remaining shares of Quinton were acquired thru Mar. 7, 1973.

In Jan., 1974, acquired for \$420,000,000 Signal Oil & Gas Co. (now Burmah Oil & Gas Co.)

DIRECTORS— P. G. Simonis, H.R. Tainsh, Alastair Down (Chrm.), Oliver Brooks, R.G. Martin, Lord Strathalmond, S.J. Wilson (Man. Dir.), McC. Anderson, M.J.W. Lofting, M.J. Roberts.

SECY— A.S. Wheate.

REGISTERED OFFICE— 48 St. Vincent St., Glasgow G2 5TW (Tel.: 041-221-3793), Scotland.
HEADQUARTERS— Burmah House, Pipers Way, Swindon SN2 1RF, (Tel.: 0793-221-1111).

BOND DESCRIPTIONS

1/2% PARTLY CONVERTIBLE (UNSECURED)
LOAN STOCK; Due June 30, 1986

(Pnds. String.)
Issued 21,213,770
Outstg. (Dec. 31, 1975) 15,354,000
Converted 5,959,770

ISSUED 20,696,000 in 1966 & 517,770 pnd. string in 1967. INTEREST PAYABLE June 30 & Dec. 31. CONVERSION PRIVILEGE EXPIRED IN 1969 REDEEMABLE at 102 between July 1 '81 & June 29 '86 and at 100 June 30 '86. TRUSTEE - Law Debenture Corp., Ltd.

LISTED - London SE:
1975 - 64 1/2 52 1974 - 65 1/2 47 1/2
1973 - 83 1/2 62 1/2 1972 - 95 80 1/2

5 1/2% DOLLAR BONDS; Due Oct. 1, 1988

(Pnds. String.)
Issued (U.S. - \$70,000,000) 29,167,000
Outstg. (Dec. 31, 1975) 23,202,000
Retired or Converted 5,965,000

DATED Oct. 1, 1968. INTEREST PAYABLE Apr. & Oct. 1. PRINCIPAL & INTEREST PAYABLE IN U.S. currency in NYC. INTEREST GRACE PERIOD - 30 days.

TRUSTEE - Morgan Guaranty Trust Co., NYC. DENOMINATIONS - Coupon, \$1,000

REDEEMABLE on 30 days' notice, beginning Oct. 1, 1978, at following prices & int. thru each Sept. 30, with price declining each year after to 100:

1979 - 102 1/2 1980 - 102 1981 - 101 1/2

SPECIAL REDEMPTION PROVISIONS - If Co. is required to pay additional int. due to changes in United Kingdom tax laws, Bonds may be redeemed in whole at any time on 30 days' notice at 102 & int. before Oct. 1, 1978, and thereafter at one half the premium specified in the above table.

Also, if at any time, 75% of the Bonds shall have been converted, Co. may redeem Bonds in whole at any time on 30 days' notice at 103 & int. before Oct. 1, 1978, and thereafter at the premium specified in above table.

CONVERTIBLE, beginning Apr. 1, 1970, and prior to maturity or day preceding earlier redemption, into 56 Ordinary shs. of Shell Transport & Trading Co., Ltd. per \$1,000 of bonds, with no adjustment for int. or divs. Fractions adjusted in cash. Privilege protected against dilution, as defined. CONVERSION AGENT - Citibank, N.A., NYC.

SECURITY - A direct unsecured obligation.

LISTED - London SE:
1975 - 57 56 1/2 1974 - 51 1/2 51 1/2
1973 - 92 70 1972 - 96 1/2 87
1971 - 92 90 1/2 1970 - 87 1/2 75 1/2
1969 - 104 92 1968 - 104 1/2 97 1/2

8 1/2% LOAN STOCK (UNSECURED); Due Aug. 31, 1996

(Pnds. String.)
Issued 54,258,000
Outstg. 53,927,000
Retired or Converted 331,000

INTEREST PAYABLE Feb. 28 & Aug. 31. REDEEMABLE at 100 Aug. 31, 1991 to Aug. 31, 1996. TRUSTEE - Law Debenture Corp., Ltd.

WARRANT holders right to convert expired June 30, 1975.

LISTED - London SE:
1975 - 54 1/2 27 1/2 1974 - 71 1/2 45
1973 - 86 1/2 67 1/2 1972 - 99 1/2 84

STOCK DATA

4.2% CUM. 1ST & 2ND PREF. One pnd. par have first & second preference as to assets and to 4.2% dividends per annum payable semi-annually April 30 and Oct. 31. 5.6% CUM. PREF. One pnd. par has third preference as to assets and to 5.6% dividends payable semi-annually April 30 and Oct. 31. 5.075% CUM. RED. PREF. has fourth preference as to assets and to 5.075% dividends payable semi-annually, Apr. 30 and Oct. 31. LIQUIDATION, whether voluntary or involuntary, entitles 1st Pref. to 100%, 2nd Pref. to 110%, and 5.6% Pref. to 115% without further participation. 5.075% PREF. REDEEMABLE after Oct. 31 '81 at the greater of an amount per share equal to the excess over par of the average quotation less a sum equal to the accrual of the fixed dividend after tax during the six months following a date 30 days prior to redemption, or 1/6 thru Oct. 31 '82, 1/6 thru Oct. 31 '84, 0/6 thru Oct. 31 '86. VOTING POWER - One vote for each 1st Pref., 10 votes per 10 pnd. string 2nd Pref. and one vote for each Ord.; holders of 5.075% &

5.6% Pref. are not entitled to vote except in certain circumstances.

NOTE - The dividend right established before Apr. 6, 1973, at a gross rate was reduced under the Finance Act of 1972 to 7/10ths of its former rate. Thus the 4.2%, 5.6%, and 5.075% Pref. stocks were formerly 6% gross, 8% gross and 7 1/4% gross, respectively.

STOCKHOLDERS - Dec. 31, 1975: Ord., 153,600; Pref. (all classes), 14,000.

LISTED - London SE (trading halted on Ord. shs. Jan. 3 to Jan. 24, 1975); delisted from Montreal and Toronto SEs July 8, 1975:

-Ordinary- -4.2% 1st Pref. -

-Decimal Currency-

1975 - 76p 25p 32 1/2p 15p
1974 - 458p 92p 44 1/2p 30 1/2p
1973 - 507p 346p 59 1/2p 52p
1972 - 497p 361p 69p 58 1/2p
1971 - 479p 295p 66p 54p

-Former Currency-

1970 - 25/9 47/6 13/6 10/4
1969 - 69/32 66/7 14/0 11/6
1968 - 125/3 66/7 17/7 15/7
1967 - 72/9 50/10 18/0 16/7
1966 - 70/7 50/4 17/9 15/3

-4.2% 2nd Pref. - -5.6% Pref. -

-Decimal Currency-

1975 - 35p 18p 57 1/2p 21p
1974 - 45 1/2p 30p 63 1/2p 47p
1973 - 60p 47 1/2p 84p 63p
1972 - 71p 57 1/2p 99 1/2p 79p
1971 - 67 1/2p 53p 95 1/2p 76 1/2p

-Former Currency-

1969 - 15/9 12/1 21/7 15/0
1968 - 17/7 15/6 23/4 21/3
1967 - 18/1 16/9 23/10 22/6
1966 - 18/0 15/7 23/9 23/10

-5.075% Red. -

-Decimal Currency-

1975 - 53 1/2p 18p 1974 - 60 1/2p 42p
1973 - 82p 58p 1972 - 92 1/2p 70p
1971 - 89p 58 1/2p

-Former Currency-

1970 - 17/7 13/9 1969 - 19/2 13/6
1968 - 21/5 19/1 1967 - 21/7 20/0
1966 - 21/8 19/3

*See Note above, under description of issues.

RECENT DIVIDENDS - Pref. regularly paid (see note above, under description of issues).

-Ord. in 1973 & aft., net amts. payable: pence-

1975 - 5.36
1974 - 12.124 1973 - 15.08 1972 - 15.08

-%

1971-68, 16% 1967 - 15% 1966 - 16.41

*Three payments: interim of 6.25p gross; 2nd interim of 4.35p gross; & final of 4.48p net (latter equivalent to 6.40p gross).

Dividends have been paid continuously on Ord. shs. since 1930.

AMERICAN DEPOSITARY RECEIPTS

Outstg. (latest available) -

Morgan Gty. (May 28, 1976) 2,530,000 ADRs
Irving Trust (June 7, 1976) 292,830 ADRs

Issued by Irving Trust Co. & Morgan Guaranty Trust Co., NYC., Depositaries and Transfer Agents in registered form on basis of one ADR for each original Ord. Share of One pnd. par.

PRICE RANGE - OTC bid (NASDAQ: BURMY); trading halted Jan. 3 to Jan. 24, 1975:

1975 - 1 1/4 1/2 1974 - 1 1/4 2 1/4
1973 - 13 8 1972 - 14 1/2 9
1971 - 11 1/2 7 1/2 1970 - 10 1/2 5 1/2
1969 - 19 9 1968 - 17 7 1/2
1967 - 8 1/2 6 1/2 1966 - 9 1/2 6 1/2

RECENT DIVIDENDS PAID - \$

1975 - 0.115 1974 - 0.262
1973 - 0.300814 1972 - 0.215
1971 - 0.422 1970 - 0.309
1969 - 0.299 1968 - 0.286
1967 - 0.3135 1966 - 0.308

Dividends have been paid continuously on ADRs since 1955.

EARNINGS AND FINANCES

AUDITORS - Whinney Murray & Co., Glasgow.

CONSOL. EARN., Y-E Dec. 31: Thou. British Pounds

1975 - Total 1,036,594
1974 - Inc 971,382
1973 - Total 89,914
1972 - Inc 89,071
1971 - Total 63,953
1970 - Inc 59,880

aDepr., Dep't Amort.

1975 - 1,036,594 63,712 44,111
1974 - 971,382 89,914 38,703
1973 - 89,071 15,949
1972 - 63,953 11,722
1971 - 59,880 9,724

1970 - 316,498 55,388 7,910
1969 - 253,046 52,422 7,026
b1968 - 210,988 47,533 6,825
1967 - 151,217 42,030 6,059
1965 - NR 38,568 5,836

*Net Inc.

1975 - 9,915 1,007 202
1974 - 14,081 10 235
1973 - 10,405 0.71 232
1972 - 9,411 31,550 0.50 235
1971 - 9,434 29,528 0.55 2,606
1970 - 9,990 28,817 0.49 2,40
1969 - 7,697 27,868 0.49 2,40
b1968 - 6,483 28,615 0.51 2,40
1967 - 5,102 26,366 0.48 2,40
1966 - 6,417 23,038 0.50 2,80

dDeficit.

*Bef. extraord. items:

1975 - 9,915 1,007 202
1974 - 14,081 10 235
1973 - 10,405 0.71 232
1972 - 9,411 31,550 0.50 235
1971 - 9,434 29,528 0.55 2,606
1970 - 9,990 28,817 0.49 2,40
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1967 - 5,102 26,366 0.48 2,40
1966 - 6,417 23,038 0.50 2,80

Amt. (Thou. British Pounds)

1975 - 9,915 1,007 202
1974 - 14,081 10 235
1973 - 10,405 0.71 232
1972 - 9,411 31,550 0.50 235
1971 - 9,434 29,528 0.55 2,606
1970 - 9,990 28,817 0.49 2,40
1969 - 7,697 27,868 0.49 2,40
b1968 - 6,483 28,615 0.51 2,40
1967 - 5,102 26,366 0.48 2,40
1966 - 6,417 23,038 0.50 2,80

Per Sh. (U.S. \$)

1975 - 9,915 1,007 202
1974 - 14,081 10 235
1973 - 10,405 0.71 232
1972 - 9,411 31,550 0.50 235
1971 - 9,434 29,528 0.55 2,606
1970 - 9,990 28,817 0.49 2,40
1969 - 7,697 27,868 0.49 2,40
b1968 - 6,483 28,615 0.51 2,40
1967 - 5,102 26,366 0.48 2,40
1966 - 6,417 23,038 0.50 2,80

Pr. Yrs. are as reported by Co.

*incl. duties, taxes & oth. imposts levied by gov'ts.

aDepr. only pr. to 1972.

bIncl. ops. of Rawlplug co. Ltd., acqd. Nov. '68 for full yr.

Annual Report - Consol. Inc. Acct., Yrs. End. Dec. 31: (Thou. British Pounds)

1975 1974

aSales 1,036,594 971,382
Trading plt. 54,651 68,027
Divds. & int. recd. . 9,061 21,897
Total income 63,712 89,914
Depr. depl. & amort. 44,111 38,703
Taxation 13,339 15,821
Transit tax relief - - - cr1,309
Corp. tax relief cr3,421 cr431
Interest 33,194 41,328
Minority int. cr501 3,512

Inc. bef. extraord. items d23,007 d7,710

bExtraord. items cr12,565 dr7,730

Net income d10,442 d15,440

Pref. divds. 920 971

Ord. divds. - - - 7,717

Bal. aft. divds. d11,362 d24,128

*Ord. sh. earns. bef. extraord. items d\$50.34 d\$50.14

*Extraord. items per ord. sh. cr0.18 d\$0.13

*Net inc. per ord. sh. d0.16 d\$0.27

dDeficit.

*Aft. pref. divds., avge. shs.: 1975 - 143,972,000; 1974 - 143,929,000.

*Converted at the rate of \$2.02 per pound in '75 & \$2.35 per pound in '74.

aIncl. duties taxes etc. of 121,773,000 pounds in 1975 & 99,241,000 pounds in 1974.

bPrimarily fr. profit on realiz. of assets, gain on curr. realignments in both yrs. and gain on sale of subs. and other trading interests in 1975.

Consol. Bal. Sheet, Dec. 31: (Thou. British Pounds)

Assets - 1975 e1974

Cash 24,232 14,211

Short term invests. 23,163 29,672

Inventories 167,561 167,168

Debtors & prepayts. 196,296 187,669

Tot. curr. assets. 411,252 398,720

Invests. in assoc. cos. 30,732 36,299

Trade invest. net 54,246 46,029

*Invest. in British Petroleum Co. 29,470 182,748

Long term ints. in tankers 76,477 14,215

Deposits in bank 1,733 2,420

*Net property 622,613 535,410

Total assets 1,226,523 1,215,841

Liabilities -

Bank advs. 114,724 107,946

Accts. pay. & accr. 192,263 185,176

Taxation 10,105 9,699

Divds. pay. 215 7,949

Accept credits 13,368 35,447

Tot. curr. liab. 330,675 346,217

Long term debt 218,630 226,800

Borrowers, guaran-		
teed by Bank of		
England	273,715	260,245
Minority int.	38,689	35,238
Depr. liab.	31,505	34,995
ca6% 1st pref. stk.	250	250
ca6% 2nd pref. stk.	750	750
ca6% pref. stk.	3,000	3,000
ca7% pref. stk.	15,000	15,000
caOrdin. stk.	143,972	143,972
Sh. Premium	30,300	30,300
Invest. reval.	42,423	100,747
Other reserves	172,247	106,964
Gdwl. arising on		
consol.	dr74,633	dr88,637
Total liab.	1,221,523	1,215,841
Net wkg. cap.	80,577	52,503
Depr. res.	143,617	127,364
TMkt. val.	29,470	182,748
aPar. Val. one British pound.		
bShs.: 143,972,000.		
cShs.: 6% 1st pref-250,000; 6% 2nd pref-		
750,000; 6% pref-3,000,000; 7% pref-		
15,000,000.		
eReclassified.		

Avco Financial Services, Inc.

(Controlled by Avco Corp.)

CAPITALIZATION

(Nov. 30 '75 after sale Dec. 17 '75 of \$50,000,000
9% Sr. Notes due Dec. 15, 1983, and sale Apr.
21 '76 of \$100,000,000 8 1/4% Sr. Notes due Apr.
15 '84)

Rating	LONG TERM DEBT	Outstg.
A	5 1/4% S.F. Debs. Jul. 15 '80	\$10,215,000
A	6 1/4% S.F. Debs. Jan. 1 '87	17,011,000
A	7 1/4% S.F. Debs. Apr. 15 '89	23,159,000
A	9 1/4% S.F. Debs. Apr. 1 '90	7,351,000
A	6 1/4% Debs. Apr. 15 '77	50,000,000
A	9 1/4% S.F. Debs. Sep. 15 '89	25,838,000
A	11% S.F. Debs. Jun. 15 '90	30,000,000
A	7 1/4% S.F. Debs. May 1 '92	50,000,000
A	7 1/4% S.F. Debs. Dec. 1 '97	50,000,000
A	8 3/4% S.F. Debs. Nov. 15 '98	75,000,000
A	10 1/4% Sr. Notes, June 1 '82	50,000,000
A	9 1/4% Sr. Notes, Dec. 15 '83	50,000,000
A	8 1/4% Sr. Notes, Apr. 15 '84	100,000,000
	4 1/4%-13 1/4% Sr. Notes, to June 1, 1992	458,458,000
	5%-12% Sr. Subord. Notes, to Apr. 1, 1988	120,075,000
	5 1/4%-9 1/4% Jr. Subord. & Capital Notes, to June 30, 1988	87,287,000
	TOTAL (incl. \$83,932,000 curr.)	\$1,204,436,000
	Incl. debt. of Co. and finance subsidiaries only; excl. debt. of other subsidiaries.	
	STOCK—Auth. Shs. Outstg. Shs.	
	Cum. Pfd. no par	500,000
	\$5 Series	3,768
	Common \$1 par	1,000,000 500,000
	LINES OF CREDIT provide up to \$801,486,000.	
	Of these lines, \$218,920,000 related to long term loans, of which \$201,172,000 was in use Nov. 30, 1975.	

CORPORATE BACKGROUND

Company and its subsidiaries engage primarily in making consumer loans to individuals in relatively small amounts and for relatively short periods, except for loans secured by real property which have considerably longer maturities and are in larger amounts. Co. also purchases retail installment contracts, mainly covering durable personal property. In addition, subsidiaries conduct an insurance business, which in part is related directly to Co.'s finance activities. Nov. 30, 1975, personal loans to individuals represented 92% and retail installment contracts 8% of Co.'s outstanding accounts.

Nov. 30, 1975, Co. and its subsidiaries operated 1,451 loan offices in 47 states and Puerto Rico (910 offices), all Canadian provinces (40), Australia (104), and United Kingdom (29).

Insurance business is conducted thru wholly-owned subsidiaries. Balboa Insurance Co. writes automobile, fire, liability, marine, glass, burglary, disability and surety insurance in 44 states, D.C.,

and Canada. Balboa is an admitted reinsurer in Mass. About 35% of business of Balboa Insurance Co. is done in connection with Co.'s business. Newport Insurance Co., wholly owned by Balboa, writes physical damage insurance in Ariz., Cal., and Wash. Newport Management Corp. acts as managing agent for Balboa and Newport, and as insurance agent or broker for others. Meritplan Insurance Co. underwrites automobile, homeowners and general liability insurance, and is an admitted insurer in 10 states. Provident Alliance Life Ins. Co. underwrites and reinsures credit life, ordinary life, and accident and health insurance risks, mainly for Co.'s financial customers. It is an admitted insurer in 38 states, and an admitted reinsurer in Mass. Hallmark Life Insurance Co., Ltd. writes credit life insurance and reinsures credit life and disability risks in Australia. Hallmark General Insurance Co. Ltd. writes casualty insurance in Australia. London & Midland General Ins. Co. is licensed to write all forms of insurance, other than life, in Canada.

OFFICES OPERATED, at Nov. 30:

1975	1,451
1974	1,466
1973	1,493
1972	1,395

SUBSIDIARIES—Co. has over 100 wholly owned operating subsidiaries, mostly with the name Avco Financial Services in their titles; some others are:

Gibraltar Collection Agency
Balboa Insurance Co.
Provident Alliance Life Ins. Co.
Meritplan Ins. Co.
Newport Ins. Co.
Newport Management Corp.
Avco Thrift

Avco Aurora Industrial Bank
Avco Boulder Industrial Bank
Avco Colorado Industrial Bank

ANALYSIS OF BUSINESS (combined results of Co. and the former Seaboard Finance Co.), Yrs. End. Nov. 30—

	Vol. of Recbls. Bus. Outstg.	aWrit-ten Loans Outstg.	Consumer Instal. Contrs. Outstg.	Retail Instal. Contrs. Outstg.
	Thou. \$—	Thou. \$—		
1975	957,035	1,725,597	811	1,055
1974	1,096,525	1,746,136	927	1,099
1973	1,222,752	1,683,796	1,017	1,075
1972	970,583	1,400,898	921	1,000
1971	742,632	1,237,992	851	974
1970	888,068	1,244,612	843	1,023

*Excl. refinanced balances.

†As of Nov. 30.

aExcl. purchased accounts.

LOSS EXPERIENCE, Yrs. End. Nov. 30:

	Gross Write-offs	Recoveries	Net Write-offs	% of Ave. Net Recbls.
	Thou. \$—			
1975	53,379	6,653	46,726	2.7
1974	43,456	6,443	37,013	2.1
1973	34,554	5,866	28,688	1.9
1972	30,740	5,596	25,144	1.9
1971	33,269	4,333	28,936	2.3
1970	29,806	4,544	25,262	2.0
1969	23,284	3,639	19,645	1.7

EMPLOYEES—Nov. 30, 1975, 7,510.

INCORPORATED in Del. July 17, 1964, as Avco Delta Corp., a wholly owned subsidiary of Avco Corp., and on Dec. 7, 1964, acquired from its parent control of Delta Acceptance Corp. Ltd. (now Avco Financial Services Canada Ltd.), which had been engaged in the finance business thruout Canada and in the U.S. since 1954. May 5, 1971, merged, and adopted the title of, Avco Financial Services, Inc. (formerly Seaboard Finance Co. from Dec. 28, 1943, to June 1, 1970), which was originally established in 1927 and had been an Avco Corp. subsidiary since 1969. The former Seaboard Finance Co. had engaged in the finance business thruout the U.S., and in Canada and Australia. As a result of the merger, Pfd. stockholders of the former Seaboard Finance Co. exchanged their shs. (on a sh.-for-sh. basis) for similar Pfd. shs. of Co., and Avco Corp. continued as the holder of all Com. shs. of Co.

CHAIRMAN & CHIEF EXEC OFFICER, H.W. Merryman; CHRM EXEC COMM, A.E. Weidman; PRES, R.M. Hett; EXEC V-P, T.M. Cumming; SR V-P & TREAS, J.T. Van Dalsen; V-P & CONTR, G.L. Fite; V-P & SECY, P.J. Cullen; V-P & ASST SECY, W.D. Gaillard.

DIRECTORS—C.W. Ferguson, H.W. Merryman, R.M. Hett, T.M. Cumming, O.E. Metzler, A.E. Weidman, M.J. Shevlin, Jr., J.R. Kerr, G.L. Hageman, J.T. Van Dalsen.

OFFICE—620 Newport Center Drive, Newport Beach, Cal. 92660 (Tel.: 714-644-5800). ANNUAL MEETING—In Apr.

BOND DESCRIPTIONS

SEABOARD FINANCE CO. 5 1/4% S. F. DEBENTURES; Due July 15, 1980

(S & P Rating A)

Authorized	\$40,000,000
Outstg. (Nov. 30, 1975)	10,216,000
Retired or in treas.	29,784,000

DATED July 15, 1960. INTEREST PAYABLE Jan. & July 15. PRINCIPAL & INTEREST PAYABLE at trustee's office. INTEREST GRACE PERIOD—30 days.

TRUSTEE & REGISTRAR—Irving Trust Co., NYC.

DENOMINATIONS—Coupon, principal registerable, \$1,000; fully registered, \$1,000 and multiples.

SINKING FUND requires retirement at 100 & int. each July 15, 1966-79, of \$2,600,000 debs. Co. may anticipate by 12 months any sinking fund payment other than the first.

REDEEMABLE OTHERWISE at any time on 30 days' notice, at the following prices & int., thru each July 14:

1977	100%	1978	100%	After	100
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SECURITY—A direct unsecured obligation. Neither Co. nor any domestic consolidated subsidiary may mortgage or pledge assets; excepted are liens created otherwise than for borrowing money or obtaining credit, liens on acquired property and purchase money liens up to 75% of the cost of property and certain other permitted liens.

LISTED—NYSE:

1975	80	74%	1974	88 1/2	72 1/2
1973	88 1/2	87	1972	88 1/2	82

6 1/4% S. F. DEBENTURES; Due Jan. 1, 1987

(S & P Rating A)

Authorized	\$25,000,000
Outstanding (Nov. 30, 1975)	17,011,000
Retired or in treas.	7,989,000

ORIGINALLY ISSUED under Seaboard Finance Co. title; now traded under Avco Financial Services, Inc. title.

DATED Jan. 1, 1967. INTEREST PAYABLE Jan. & July 1 to holders registered the preceding Dec. & June 15, respectively. PRINCIPAL & INTEREST PAYABLE at trustee's office. INTEREST GRACE PERIOD—30 days.

TRUSTEE & REGISTRAR—Irving Trust Co., NYC.

DENOMINATIONS—Fully registered, \$1,000 & multiples thereof, exchangeable without charge.

SINKING FUND requires retirement at 100 & int. each Jan. 1, to 1986 of \$1,650,000 of Debs. Co. may anticipate by 12 months any payment other than the first.

REDEEMABLE OTHERWISE beginning Jan. 1, 1977, on 30 days' notice, at the following prices & int., thru each Dec. 31, with price declining each year after to 100:

1977	102.75	1978	102.40	1979	102.05
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SPECIAL REDEMPTION PROVISION—Debs. may be redeemed at the following prices & int., thru each Dec. 31, with price declining each year after to 100:

1976	101.55	1977	101.375	1978	101.20
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if total finance receivables of Co. and consolidated subsidiaries at end of calendar quarter preceding notice of redemption are less than 80%, but not less than 60% (and at 100 & int. if less than 60%) of the largest amount of such receivables outstanding at the end of any month; provided no Debs. may be redeemed thru refunding by debt maturing in more than one year.

SECURITY—Same as for 5 1/4% S. F. Debs. due July 15, 1980.

LISTED—NYSE:

1975	72 1/2	68	1974	79	68
1973	86	80	1972	68	78

7 1/4% S. F. DEBENTURES; Due Apr. 15, 1989

(S & P Rating A)

Authorized	\$30,000,000
Outstg. (Nov. 30, 1975)	23,159,000
Retired or in treas.	6,841,000

ORIGINALLY ISSUED under Seaboard Finance Co. title; now traded under Avco Financial Services, Inc. title.

INDENTURE DATED Apr. 15, 1969. INTEREST PAYABLE Apr. & Oct. 15 to holders registered on the 15th day preceding interest date. PRINCIPAL & INTEREST PAYABLE at trustee's office. INTEREST GRACE PERIOD—30 days.

THE BURMAH OIL COMPANY, LIMITED

Registered in Scotland No. 5098

Registered Office:

48 St. Vincent Street,
Glasgow G2 5TW.

9th January, 1975.

To the holders of all the registered securities of
The Burmah Oil Company, Limited.

Dear Sir or Madam,

The following is the text of an announcement issued by the Board of The Burmah Oil Company, Limited at 8.30 p.m. on 31st December, 1974.

"Since the interim announcement in September there has been a sharp downward revision of the anticipated results for 1974, largely due to the tanker operations which are now expected to show a substantial loss. On the information at present available to them, the Board believes that the Group's results for the full year may disclose a small profit. The interim dividend already declared will be paid in January, but no further Ordinary dividend for 1974 can be expected.

As a result of the anticipated trading results for the year, the Company expects that it will not be able fully to comply with certain provisions of loan agreements with bankers under which foreign currency loans amounting to \$650m. have been advanced to the Group in connection with its overseas activities. In addition as a result of the substantial fall in the market value of its investments in The British Petroleum Company Limited the Company will be entering into discussions with the Trustees of its £54m. 8½ per cent. Unsecured Loan Stock 1991/96.

Following discussions with H.M. Government and the Bank of England, the following arrangements have been agreed between the Company and the Bank of England to provide interim support to the Company pending realisation of certain major assets in continuation of a programme already in hand.

1. It is proposed that certain existing long-term Dollar borrowings amounting to \$650m. will be renegotiated as 12 month borrowings guaranteed by the Bank of England.
2. In addition, the Bank of England has offered certain assistance to enable the Company to deal with its Sterling borrowings.
3. Certain changes will be made in the management of the Company.
4. Messrs. Peat, Marwick, Mitchell & Co. will be appointed to assist in the financial management of the Group.
5. A full review of the tanker operations will be undertaken in the light of the independent investigation already commissioned by the Company early in December.

As security for the assistance provided, the Company's unpledged holdings of shares of The British Petroleum Company Limited and the 'Shell' Transport & Trading Company Limited will be made over to the Bank of England with the right of realisation.

After completing these dispositions, the Company will continue to own substantial interests in the United Kingdom and overseas. The Company will pursue the development of its important North Sea interests, in particular in the Ninian and Thistle fields. In addition it has accepted the principle of 51% public participation in its share of these fields.

[P.T.O.]

The Council of The Stock Exchange in London has, at the request of the Company, agreed to suspend the listing of all the securities of the Company for the time being."

A further announcement was issued at 6.00 p.m. on 1st January, 1975, the text of which is set out below.

"Arising from certain comments on radio and television relative to the announcement made by The Burmah Oil Company, Limited on 31st December, 1974, the Company feels it necessary to clarify the following points:—

1. The Group continues to trade normally.
2. Reference to the fact that the Company might not be able fully to comply with certain provisions of foreign currency loan agreements is related specifically to aspects of the covenants and ratios associated with such agreements and does not in any way imply inability on the part of the Company to pay due amounts either of principal or interest.
3. The Company's holding of 21.6 per cent. of the shares of The British Petroleum Company Limited has not been taken over either by the Government or the Bank of England but has been pledged to the Bank of England as collateral in return for the assistance provided, the Bank being given the right of realisation.
4. The Company has in no sense 'given away' to the Government 51 per cent. of its interests in the Ninian and Thistle Fields in the North Sea. The Government has already announced its intention to seek to negotiate a 51 per cent. participation in all North Sea Fields. Burmah has accepted that the Government should acquire 51 per cent. of its own interests in the North Sea. The precise terms of the Government's participation remain to be negotiated."

Yours faithfully,

J. A. LUMSDEN,
Chairman.

ITEM 7 OF SCHEDULE A TO COMPLAINT - MEMORANDUM OF LAW
TO DR. JOHN J. McMULLEN FROM SEYMOUR & PATTEN RE NEW
YORK LAW OF DIRECTORS' SELF-DEALING (L. PADRON AND ONG
MATTERS)

SEYMOUR & PATTON

Attorneys at Law
1225 Connecticut Avenue
Washington, D.C. 20036

(202) 452-1711

Memorandum to: Dr. John J. McMullen

From: Seymour & Patton

New York Law of Directors' Self-Dealing
(El Padron and ONG matters)

You have requested that we furnish you a legal analysis of a director's liability to his corporation for undisclosed self-dealing; i.e., in transactions of the corporation where a director receives a personal interest or benefit. This analysis is for purposes of further evaluation of the two counts in the proposed complaint against Mr. Kulukundis relating to El Padron, S.A., and Overseas Natural Gas. Kulukundis obtained and continues to have interests in these two companies which were not disclosed to the Burmah or Tankers boards at the time Tankers entered into dealings with them. In particular, you have asked us to advise you whether Mr. Kulukundis' undisclosed interests in El Padron, S.A., in the form of his directorship and receipt of money, is in violation of the law in circumstances where Tankers benefitted financially from its charter with El Padron. In other words, may a

director benefit personally on the other side of a transaction if his corporation also benefits?

Conclusions:

1. Tankers' transaction with El Padron is probably voidable as unfair to Tankers, but even if it were determined to be fair to Tankers or if Tankers should elect not to have it set aside, Kulukundis is liable to Tankers for the money he received from El Padron in breach of his fiduciary duty.

2. The issuance of Burmast East shares to ONG is a voidable transaction and Kulukundis is also personally liable for breach of his fiduciary duty.

3. Burmah and Tankers have an obligation to demand from Kulukundis a return of the benefits received and to seek recourse if he fails to do so.

The Relevant Facts:

El Padron: On December 18, 1973, El Padron entered into a time charter with Pertamina whereby El Padron would designate a vessel to perform for three years at \$744,410 per month charter hire. On October 28, 1974, Kulukundis became a director, vice president and check signatory of El Padron. On November 18, 1974, Tankers chartered the Universe Patriot to El Padron for \$474,406 per month, and El Padron simultaneously delivered it to Pertamina to perform under the December 18, 1973 time charter. The charter hire to Tankers from El Padron was \$3 per DWT. This was arguably at or near the current market rate, but was only \$100 per month more than Tankers was paying to the owner, Sea Tankers. El Padron receives a monthly differential of \$280,000,

of which amounts as yet undetermined are received by Kulukundis. El Padron is controlled by Steven Morrelle, Brian Robinson and, it appears, by Kulukundis and his cousin, Michael. The El Padron transaction and Kulukundis' interest therein were never disclosed to or approved by Tankers' or Burmah's board.

ONG: On September 23, 1973, Burmast East Shipping Corporation signed the LNG Transportation Agreement with Pertamina. Burmast East at the time had issued 50 of its 1,000 shares to Far East Oil Trading Corp. Burmast East was intended to be a subsidiary of Tankers, and on November 8, 1973, it issued the remaining 950 of its shares to Tankers (843-3/4 shares) and Overseas Natural Gas Corp. (106-1/4 shares). ONG thereby obtained 10.6 percent of a potentially large operation. On November 14, 1973, Burmah's board of directors approved the issuance of the shares to ONG and Tankers. But at that time Kulukundis owned a substantial stock interest in ONG, as established by documents and by his admission. His interest in ONG was not disclosed to the board.

The Legal Principles:

Our previous memoranda of June 3 and July 1, 1975 have explained in detail the reasons why New York law governs Kulukundis' fiduciary duties to Tankers and Burmah. These memoranda also discussed in detail the general principles of fiduciary duties of directors and officers. Specifically, however, we shall discuss in this memorandum the law governing

the "self-dealing" situation as appears in the El Padron and ONG transactions. In Part III below, these principles are applied to those two transactions.

Under New York law:

1. A contract or transaction involving an interested director is not void or voidable solely by reason of the director's self-interest if (1) the facts of his self-interest are fully disclosed to and approved by his corporation's board or the shareholders, or (2) the contract or transaction is fair and reasonable to the corporation. (A third requirement is that the interested director's vote on the transaction not be required for its approval.)

2. Even if a contract or transaction is not void or voidable (as a result of full disclosure or fairness to the corporation), a self-dealing director is liable to the corporation if he breaches his fiduciary duty. New York law thus distinguishes between the voidability of the transaction itself and the liability of a director for self-dealing.

The Business Corporation Law (BCL) § 713 governs the validity of an interested director transaction:

§ 713. Interested directors

(a) No contract or other transaction between a corporation and one or more of its directors, or between a corporation and any other corporation, firm, association or other

entity in which one or more of its directors are directors or officers, or have a substantial financial interest, shall be either void or voidable for this reason alone or by reason alone that such director or directors are present at the meeting of the board, or of a committee thereof, which approves such contract or transaction, or that his or their votes are counted for such purpose:

(1) If the material facts as to such director's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the board or committee, and the board or committee approves such contract or transaction by a vote sufficient for such purpose without counting the vote of such interested director or, if the votes of the disinterested directors are insufficient to constitute an act of the board as defined in section 708 (Action by the board), by unanimous vote of the disinterested directors; or

(2) If the material facts as to such director's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the shareholders entitled to vote thereon, and such contract or transaction is approved by vote of such shareholders.

(b) If such good faith disclosure of the material facts as to the director's interest in the contract or transaction and as to any such common directorship, officership or financial interest is made to the directors or shareholders, or known to the board or committee or shareholders, approving such contract or transaction, as provided in paragraph (a), the contract or transaction may not be avoided by the corporation for the reasons set forth in paragraph (a).

If there was no such disclosure or knowledge, or if the vote of such interested director was necessary for the approval of such contract or transaction at a meeting of the board or committee at which it was approved, the corporation may avoid the contract or transaction unless the party or parties thereto shall establish affirmatively that the contract or transaction was fair and reasonable as to the corporation at the time it was approved by the board, a committee or the shareholders.

Absent disclosure of a director's interest in a transaction, a corporation may move to set aside the transaction in court, and the other side has the burden of proving that the transaction was fair to the corporation.^{1/}

Even if B.C.L. § 713 is complied with, however, a director who engages in an impropriety or fraud, or fails to make full and complete disclosure, is liable to the corporation for breach of fiduciary duty under B.C.L. § 717:

"A director who does not make a full and fair disclosure of his interest, or members of the board who breach their duty as defined in § 717 in approving such a contract or transaction may be held responsible for such conduct despite a technical compliance with this section." Legislative Report, McKinney's Consol. L. of N.Y., Book 6, page 639.

^{1/} This is the relief being sought against Kulukundis and ONG in the proposed third cause of action.

"Nor will members of the board who breach their duty as defined in Section 717 in approving such a contract or transaction be exonerated from liability for their conduct because there has been a technical compliance with Section 713." Hoffman, Status of Shareholders and Directors Under New York's Business Corporation Law, 11 Buffalo L. Rev. 496, 566-67 (1962).

Compliance with § 713 will then (in the absence of extraordinary circumstances) preclude the avoidance of a contract with another corporation, although the burden of proving compliance and fairness is on the other party. But even though the contract is not voidable, a director who personally benefits in a transaction is liable for breach of his duty, and directors who know and approve of the self-dealing are also liable. It is well established that a director cannot secure for or reserve to himself any advantage or benefit in acting for the corporation. His gains are unjust enrichments which belong in equity to the corporation, regardless of his intent. Gildener v. Lynch, 54 N.Y.S.2d 823 (1945); Garbarino v. Utica Uniform Co., 269 App. Div. 622, 58 N.Y.S.2d 136, aff'd 295 N.Y. 794 (1945); Mann v. Luke, 44 N.Y.S.2d 202, aff'd 272 App. Div. 19 (1943); Miller v. Crown Perfumery Co., 57 Misc. 383, 100 N.Y.S.2d 760 (1908).

Within this legal framework, the El Padron and ONG transactions can be evaluated.

Legal Remedies Available in El Padron Transaction:

The operative facts of the El Padron transaction are known and established. There was no board approval of the November 18, 1974 charter party. There was no disclosure to the boards of Tankers and Burmah that Kulukundis was an officer and director of El Padron and that he received money from El Padron. Kulukundis never submitted the El Padron transaction for board approval. These facts standing alone would allow Tankers to move in court for rescission of the charter party under B.C.L. § 713. Then, under § 713(b),

"the corporation may avoid the contract or transaction unless the party or parties thereto shall establish affirmatively that the contract or transaction was fair and reasonable as to the corporation at the time it was approved by the board, a committee or the shareholders."

Fairness is a fact question to be determined under all relevant circumstances. El Padron is merely a conduit for the personal benefit of Kulukundis, Morrelle and others, including possibly other Kulukundis family members. As such, El Padron receives \$280,000 per month which might have gone to Tankers. There is an enormous disparity between El Padron's charter hire of \$280,000 and Tankers' de minimus \$100, and El Padron's income is for no purpose other than remunerating certain individuals. In these circumstances, we believe a New York court would be likely to find the deal unfair to Tankers notwithstanding Kulukundis' arguments that the El Padron charter hire allows Tankers to cover its charter payments to Sea Tankers, and that the charter rate to Tankers was at or

near the market. Nevertheless, El Padron's interposition was as a mere conduit for personal gain, and the charter hire could have been much more favorable to Tankers.

Apart from the voidability of the transaction, Kulukundis has personally benefitted from El Padron, and the law of New York is clear. Kulukundis owed undivided loyalty to Tankers, which means that by causing Tankers to contract with El Padron he was obliged to confer benefits only upon Tankers and not himself as well. Even if Tankers received some benefit, it was entitled to the full benefit, including the amounts received by Kulukundis.

The touchstone of the strict New York rule requiring absolutely undivided loyalty was Mr. Justice Cordozo's statement in Meinhard v. Salmon, 249 N.Y. 458 (1928):

"Not honesty alone but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the 'disintegrating erosion of particular exceptions.' Wendt v. Fischer, 243 N.Y. 439 . . . Only then has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this Court."

For all practical purposes, Tankers is merely breaking even on the Universe Patriot, since \$100 per month cannot practically be considered a profit. Tankers'

benefit is the avoidance of losses. Kulukundis had it in his power, however, to increase Tankers' benefit by refusing to arrogate to himself monies which could and should go to Tankers. This is the rationale of the Meinhard v. Salmon doctrine and of subsequent leading New York decisions.

A director owes his company "a loyalty that is undivided and an allegiance that is influenced in action by no consideration other than the welfare of the corporation." Litwin v. Allen, 25 N.Y.S.2d 667, 677 (1940). Clearly, then, a director may not derive a personal profit which harms his company. Application of Vogel, 25 App. Div. 212, 268 N.Y.S.2d 237, 241 (1966); Pollitz v. Wabash R. Co., 207 N.Y. 113 (1912).

A showing of "harm" or "detriment" to the company, however, is not the same as a showing that the company did not "benefit," for a transaction beneficial to the company may well nevertheless deprive it of other and greater benefits as a result of the director's self-profiteering.

Controlling New York decisions, therefore, presume that personal profit creates harm to the corporation, in situations like the El Padron transaction. Foley v. D'Agostino, 21 App. Div. 60, 248 N.Y.S.2d 121, 128 (1964);

Sage v. Culver, 147 N.Y. 241, 247 (1895); New York Trust Co. v. American Realty Co., 244 N.Y. 209 (1926).

In the recent leading case of Diamond v. Oreamuno, 24 N.Y.2d 494, 301 N.Y.S.2d 78 (1969), the Court of Appeals held that a director who used his position to personally profit was liable to the corporation for that profit even though the corporation was not damaged. The question, said the Court, is who is entitled in fairness to the profit, not whether the corporation was "harmed." Moreover, harm is inherent when a director makes a profit as a result of his position.

Liability in the El Padron transaction is even clearer than in Diamond, for Tankers was in fact harmed because it could have received a much better deal except for Mr. Kulukundis' self-aggrandizement. ^{2/} Under the Diamond case, the money received by Kulukundis clearly belongs to Tankers.

Finally, it should also be noted that the failure of a director to disclose his self-interest is also in

^{2/} Along these same lines, the court in the Blaustein case noted that a fiduciary cannot use its dominating and controlling position to make profits which the cestui should have made. See, Blaustein v. Pan American Petroleum & Transport Co., 21 N.Y.S.2d. 651, 733 (1940), modified 293 App. Div. 97, 31 N.Y.S.2d 934 (1941).

itself an actionable breach of duty not dependent upon a showing of harm, for non-disclosure deprives the corporation of the opportunity to prevent the self-dealing. New York Trust Co. v. American Realty Co., 244 N.Y. 209, 155 N.E. 102 (1926). ^{3/} Here, Kulukundi did not present the facts to the board for its consideration.

Legal Remedies Available in ONG Transaction:

The issuance by Burmast East of 10 percent of its common stock to ONG deprives Tankers of equity and profits in the performance of the Transportation Agreement with Pertamina. For this reason, an action to void the issuance of the shares on the ground that Kulukundis' interest in ONG was not disclosed is likely to succeed because the affirmative burden of proving fairness under § 713 could not be met. Absent some evidence not now available, the fact of Kulukundis' interest in ONG was not disclosed to or known by Burmah's board when it approved the stock issue on November 14, 1973. The "Notes for the Board" on that date reveal that ONG is to be issued 10 percent of Burmast East shares, but there is no mention of the ownership, nature or identity of ONG.

^{3/} The only New York decision which might be construed to require a showing that the transaction itself was unfair to and damaged the corporation--not merely that further benefits were deprived it--is Everett v. Phillips, 288 N.Y. 227 (1942), but that case held that mere presence on both boards, without personal profit, is not an actionable harm to the corporation unless unfairness is shown. Here, there is the element of personal profit.

Upon these facts the elements of B.C.L. § 713 are not met and the transaction itself is voidable.

In addition, Kulukundis is liable to Tankers for breaching his fiduciary duty. His breach consisted of failing to disclose his interest and also of personally profiting with shares in ONG. Under the settled New York decisions discussed above, Tankers is clearly entitled (1) to rescind the issuance of Burmast East shares in ONG, and (2) to recover from Kulukundis his personal benefit-- his stock in ONG and/or all benefits received by him from ONG.

Recourse Against Mr. Kulukundis:

We have previously stated in considerable detail the New York law requiring present management to take steps to rectify and recover for improper conduct of a prior officer or director. This obligation applies with respect to the El Padron and ONG transactions. Accordingly, prompt demand should be made upon Mr. Kulukundis and, if necessary, legal action should be instituted against him for the return of monies, stock and other benefits received from these companies.

Conclusion:

Counts III and IV of the proposed complaint are meritorious for the foregoing reasons. New York decisional law strongly condemns the use of a corporate office for personal profit.

SEYMOUR & PATTON

ITEM 8(a) OF SCHEDULE A TO COMPLAINT - MEMORANDUM DATED
JULY 28, 1975 RE INTERVIEW WITH ELIAS J. KULUKUNDIS

CONFIDENTIAL
ATTORNEY'S WORK PROJECT

Memorandum to: The File
From: TEP
Re: Burmah
Date: July 28, 1975

Interview With Elias Kulukundis

On Monday, July 19, 1975, Jim Keane (JK), Sam Seymour (SHS) and Tom Patton (TEP) interviewed Elias J. Kulukundis (EJK). The interview lasted from 3:00pm until 4:30pm. Following about two minutes of pleasantries, the discussion began. The following is a chronological record of the interview.

TEP began by stating that certain company transactions could not be explained in the files due to the absence of explanatory files. TEP stated that, as an example, we have recently been discussing with Naess his claim for a transfer commission for arranging financing for the Fagerfjell, which was not documented by any agreement. EJK said he did not recall any transfer commission. He said he thought that any such commission was arranged with the owner (O&U). No arrangement was made by Burmah with Naess.

SHS stated that a letter to EJK from John Davies dated May 13, 1973 stated that commissions of "George" were rebated to EJK who paid Davies. EJK said that he thought the interview was to be limited to vessel transactions according to Mr. Wilson's statement to him of last week. EJK said that there were "insinuations" about his conduct. SHS and TEP said that we had several topics to cover which the company needed answers to but agreed to defer the Davies letter to later. TEP said that we would first ask questions about current vessel transactions.

[At this point the Falkefjell suit was discussed as being a pending vessel matter and it was agreed that a discussion of Falkefjell would occur on Wednesday, July 30 at 10am, with Hornby, Sutton and Seymour or Patton.]

TEP stated that one current vessel problem was that Tankers has the opportunity to sell the Vardefjell but could not do so without knowing the identity of Freeway which has an option to buy one-half the vessel. EJK said he did not know what the Vardefjell was, and JK, TEP and SHS said it was the Burmah Garnet. EJK said that he did not know why Freeway had a one-half interest. He said that he dealt only with Naess. He knew nothing about Oldgate or Freeway except that they were set up for Norwegian tax purposes.

SHS stated that Ugelstadt of O&U told us that O&U knew nothing about Oldgate and Freeway and that they were set up by Burmah. SHS said that O&U told us that EJK was the one who knew about Oldgate and Freeway and that EJK now says that O&U knows all about them.

EJK replied that this is the first time he ever knew of Freeway. TEP said "Today?" EJK said yes, that he never heard of Freeway before this moment. EJK said that he would give an affidavit that he never heard of Freeway or Oldgate. SHS and TEP said that Naess refused to tell us about them and that Ugelstadt said that Oldgate and Freeway were set up at Burmah's request. EJK said that Naess set up Freeway and Oldgate for Norwegian tax purposes.*

SHS told EJK that Burmah has a problem continuing to pay Oldgate since Oldgate receives an excess differential over payments to Brandts. EJK said he didn't know about this. He

*Query: If Ugelstadt did not know why Freeway and Oldgate were created, how could they be fore Norwegian tax purposes?

said that Naess, Ugelstadt and Hornby would know. EJK said that he did not know why Oldgate was interposed, but then he made a comment that a bareboat charter required the interposition. EJK said he never dealt with Brandts.

EJK said that the entire Vardefjell deal was initiated by O&U through Naess.

SHS asked why Vardefjell and Jonwi were good deals for Burmah. EJK said that three year charter parties were cancelled and that the cost was spread out. SHS and TEP asked why the deal was good for O&U. EJK said it was good for tax purposes.

TEP asked if Oldgate was created solely for tax purposes, as EJK suggested. EJK said the he did not know. SHS said to EJK that EJK must have an "informed judgment" about the purpose of Oldgate. EJK shrugged.

TEP said that another current vessel problem was Pertamina's default on the Zodiac vessels. TEP said that Burmah must finance the mortgages and then look to Carnegie to pay one-half in 90 days. But Burmah's option to get Carnegie's interest on Carnegie's default was pledged to Guinness Mahon, exchanging a \$250 right for \$5,000,000 financing. EJK said he did not recall and to ask Ellis.

SHS asked if EJK had an interest in Carnegie, EJK said "none." EJK said that Carnegie is his relative Michael and Tony. His relatives had a right to an offshore drilling and needed construction financing before placing long term financing. EJK at first said he did not recall the pledge of Carnegie's stock.

SHS asked if Burmah's agreement to pledge the Carnegie shares to Guinness Mahon was a favor to EJK family interests. EJK said "Yes."

SHS: "Where does that leave Burmah?"

EJK: "Ask offshore - Michael and Tony."

JK: "Was there no benefit to Burmah?"

EJK: "None. It was a favor to relatives."

SHS: "There are no records that this was disclosed to the Burmah's boards."

EJK: "I didn't go for approval on this."

SHS: "What was the consideration to Burmah? Was it jsut for your family?"

EJK: "Definitely. There was no consideration to Burmah. It was just a favor."

SHS asked about the Tankers International commission of 2½%. TEP said the 2½% supposedly on charter hire is being paid as 2½% of charter plus costs. EJK said Burmah can "take control of Carnegie." JK said that we can take control only of operations.

TEP: "Who is Tankers Internation?"

EJK: "You know."

TEP and SHS said we didn't know but we heard that it's Morrelle. EJK said that Tankers International is Morrelle. JK asked Morrelle's nationality. EJK said American, of Russian-Jewish extraction.

EJK said we should talk to Ellis about Zodiac.

TEP then said that Klaveness is another current problem because Klaveness claims repayment of \$7 million consisting of \$5.5 million plus interest, and we have no records of a loan. EJK said it was not a loan.

SHS: "Were there any real charter parties to cancel?"

*EJK: "No. They were created for the deal. It was part of the Profit Improvement Scheme."

SHS: "Whose idea was this?"

EJK: "London."

TEP: "Who is London?"

EJK: "Everybody."

TEP: "Since there were no charter parties, there was no cancellation and no income, and the \$5.5

million was to be paid back?"

EJK: "Correct. London said increase profit."

SHS: "Did London know the details of how it was done?"

EJK: "No." EJK said he was given the option to decide how to improve profits. It was to be "audit proof." It was done to allow for auditors' confirmation.

JK: "How widely known was this in London?"

EJK: "Williams' knew. Simone's knew. It was widely known."

SHS: "Did they know that charter parties were created?"

EJK: "Yes."

JK: "What was the purpose?"

EJK: "To get money for 1972 but to spread repayment over 20 years."

TEP: "Who in London suggested the PIS scheme which created Klaveness?"

EJK: "Nicky Williams."

SHS: "Who in Tankers knew about this?"

EJK: "No one."

SHS: "Who helped put the deal together?"

EJK: "Naess."

JK: "Who drew up the document?"

EJK: "Lund"

TEP: "Did Ellis work on this?"

EJK: "Ellis worked on this."

SHS: "Was the \$5.5 million booked as a liability?"

EJK: "No. It would not be audit proof if it were a liability."

There was a discussion to the effect that the auditors approved the \$5.5 million increase item. EJK said it was set up to get auditors' approval. He again said it was audit proof. The \$5.5 million could not be a liability because the auditors would know about it.

SHS asked if there were any other deals like Klaveness and EJK said "no."

TEP and SHS asked why the joint venture in Klaveness and other deals gave up one-half the profits but kept all liabilities.

JK said that a common pattern in transacting was that one-half the profits were given up but not the losses or liabilities.

EJK responded that Burmah had the financing capacity which the banks looked to.

SHS asked: "But why give up one-half the profits?"

EJK: "The ships were under valued."

JK: "But why give up one-half the profits?"

EJK: "The owners had cheap ships. They had cheap contracts. Their contribution was cheap construction contracts."

TEP: "But this does not explain the July 1974 Klaveness joint venture since the ship was not cheap and Burmah gave up one-half."

EJK: "But Burmah had to designate a vessel."

SHS stated that El Padron was a current problem because El Padron was getting a \$280,000 charter hire differential and we didn't know who was receiving the money.

EJK said that "El Padron was an old charter." He said that the Chase bank would not take any more "Pertamina paper" so he gave El Padron a 10-year back to back charter. We said we did not understand this. We asked EJK who was behind El Padron. EJK said his relatives own El Padron. TEP asked which relatives. EJK said Michael Kulukundis. TEP stated that the records show EJK, Robinson and Trinh as directors. SHS asked why EJK was a director.

EJK: "To protect Burmah's interest."

JK: "Who is Astorfina?"

EJK: "I don't know."

SHS asked why Robinson was a director and who brought

him in. EJK said Michael Kulukundis brought him in. We asked EJK to explain again the chartering arrangement. EJK said that El Padron was an "old company" which had an existing charter out to Pertamina. El Padron went looking for a vessel to fix to the charter. Michael Kulukundis went to EJK. EJK chartered the Universe Patriot at above the market since El Padron's charter hire from Pertamina was to be above the then current market.

' said that we understand that the 10 year charter from Sea Tankers to El Padron begins after the Burmah-El Padron charter expires. EJK said that never went through.

SHS asked EJK if EJK got "any compensation" from El Padron.

EJK: "Yes."

SHS: "In what form?"

EJK: "Money."

SHS: "I know that, but in what form?"

EJK: "Bonuses."

SHS: "In what amounts?"

EJK: "I will have to check."

TEP then asked why El Padron would take the Universe Patriot from Burmah at above the market when El Padron could have gotten another vessel at the time at the lower current market, thus saving charter hire. EJK answered: "We have relations with Pertamina which transcend money."

SHS asked EJK if El Padron had any other dealings with Burmah. EJK said "No." SHS asked EJK "Who is Trinh?" EJK said "_____." JK asked if McFarlane got compensation from El Padron. EJK said "No." SHS asked if anyone else at Burmah was compensated by El Padron. EJK said "No." SHS asked EJK from whom his money came in El Padron.

EJK: "Why do you want to know?"

SHS replied that it would help us learn who has El

Padron's money. EJK said "I prefer not to answer. I will answer in time." TEP asked whether EJK's compensation was before or after EJK left Burmah. EJK said "after." SHS said the company would like to learn the source and amount of El Padron's payment to EJK. EJK said he would consider it. SHS then showed EJK the Davies letter concerning commission splitting and asked about the arrangement. EJK said "I prefer not to comment now. I will get in touch."

TEP said that other matters would have to be covered in a later interview, and mentioned the Seabulk arbitration. EJK said he would be glad to explain it and it was agreed that we would talk about Seabulk prior to mid-September when the arbitration is scheduled.

JK then asked questions about Energy. He asked how United Tankers got in and how Energy got in.

EJK said United Tankers was approached because Burbank was friendly with them. But their price was too high so he decided to form his own company. So Marine Transport and Energy came into the picture. JK reiterated that Energy was created because United Tankers was too expensive.

TEP asked why Chen got 100% of Energy. EJK said he didn't. TEP said he of course meant Chen, Shelby and Cuneo. EJK said "because they were capitalizing it." JK asked "what capital?" EJK replied: "working capital." JK asked why the 3 men didn't get 51%. EJK said: "Because Marad didn't want Burmah to have any part of it."

JK then discussed Burbank and Dowd. EJK said that Dowd was Burbank's broker who put the deal together and earned 20% of Summit.

[With reference to the Energy discussion TEP's recollection is not acute and JK's memo on this will be more complete.]

JK then asked about Naess' commissions on the Bahamas Terminal. EJK raised Seabulk and said he would be glad to explain it now. He said Dowd started the project and came to EJK with a proposal from Continental Oil. Mosvold was involved in this. This deal did not work so Chen and Dillingham began working with Burmah. Naess brought Hvide and Bergesen to EJK and this was Naess' work which earned him a commission. JK queried the structure of the commission as based on throughput. EJK said it had to be structured some way and the throughput basis meant that commissions would depend on the existence of throughput.

ITEM 8(b) OF SCHEDULE A TO COMPLAINT - MEMORANDUM DATED
NOVEMBER 14, 1975 ENTITLED INTERVIEW WITH N. J. D. WILLIAMS

PRIVILEGED ATTORNEYS' WORK PRODUCT

MEMORANDUM

TO: The Files
FROM: TEP
DATE: November 14, 1975
RE: Burmah Oil Tankers, Ltd.

INTERVIEW WITH N. J. D. WILLIAMS

On Monday, November 10, 1975, David Sutton and TEP interviewed Mr. N. J. D. Williams at Broome Manor in Swindon. The interview lasted from 2:30 to 5:45 p.m. The following is the substance of Mr. Williams' statement to us.

1. Introduction.

DS and TEP began by noting the various reasons for this interview. We mentioned the pending litigations in London and New York. The absence of adequate files in Tankers was noted as a particularly big problem in reaching an understanding of Tankers' past transactions. We noted that a number of past transactions were questionable and did not have sufficient documentation. Mr. Williams indicated that he was happy to furnish us with whatever facts he could recall. He said that he had not reviewed any documents or files in preparation for the interview and had not seen pertinent documents in many months. We indicated that his present recollection was important to us and that the absence of his review of documents would not detract from the importance of the interview.

2. Reporting and Authority.

EJK at all times had a defined method of reporting to management but he did not at all times follow it. EJK began his relationship with Burmah when the company was having difficulty getting vessels to service the Chittagong Refinery. Colin Bromige was responsible for the supplies to that refinery. EJK appeared to Bromige and organized a proposed freight contract, and Bromige made a deal with EJK whereby EJK organized transportation to Chittagong. EJK's first contact with Burmah and his first reporting authority was with Bromige and, ultimately, to Tom Simmonds. At that time, Burmah was already contemplating going into the tanker business but EJK independently suggested that the company go into the tanker business and asked for 10% of the equity in the new business. Before Tankers was formed, EJK and Bromige also made an arrangement to get tankers to service the Ellesmere Port. It was in this regard that EJK and Bromige created a plan to take on more tankers than was needed for Burmah's business and to charter out excess tonnage on the spot market so as to average out the losses on the freight paid for the Ellesmere transportation, and indeed even to make a small profit.

As a result of these factors, Tankers was formed in 1970 and an American desk was created in Burmah. Dennis Thatcher headed the American desk and EJK originally reported to Thatcher. Thatcher had great problems with EJK due to EJK's inability to communicate and to follow company procedure. The formal organization

and the reporting lines of management were all comprehensively manualized in the PCM manual.

It soon became obvious that Burmah's main growth policy was to increase American profits. This was in 1972. The only way to do this was to establish the American subsidiary, BOI. NJDW expected John Davies to do this job, but Davies was simply not up to it. Davies was out of his depth outside of the legal field. NJDW himself headed up the small legal department of Burmah before he rose quickly to the top and Davis followed him as head of the legal department. Although Davis was at BOI, EJK's reporting function was to Thatcher and not to Davies.

EJK was a poor communicator and never was able to report according to the company's desires. At about the time Davies left, Dewhurst took responsibility for the U. S. desk, and he put Roberts in as head of BOI. For a time, EJK was responsible to report to Roberts. This was a disaster because there were great jealousies and hostilities between the two men. EJK's reporting to Roberts lasted only a short time and the line of reporting was taken from Roberts and given to Swindon where EJK's reporting reference was Dewhurst. This was in about early 1972.

Dewhurst was assigned the role of speaking for Tankers and EJK at board meetings. This role continued to the end of 1974 unchanged. After Dewhurst became the reporting reference, the situation improved. EJK generally kept to this line of reporting

to Dewhurst although not exclusively. EJK would report to both NJDW and Dewhurst. The reason the situation was better is that EJK liked the direct line to top management in Swindon. He was impossible with subordinates and equals, but very deferential and solicitous with seniors. The main trouble after Dewhurst became the reporting reference was EJK's role with the auditors. He constantly complained that the auditors were too restrictive. Tom Mitchell of E&E did a good job of trying to keep EJK in line.

It was always hard for management to understand the details of EJK's proposals. He had an immensely agile mind and always jumped from one subject and one project to the next without buttoning down the details before moving on.

3. Transactions with Indonesians.

NJDW recalls generally that EJK had some relations with Pertamina before he joined Burmah and recalls that it involved joint ventures for the Chittagong refinery. He recalls generally that Burmah had a claim against the Kulukundis family joint venture which was resolved by retaining some interest in Pertamina charters.^{1/} He did not recall the details but believes that this was the first Burmah dealing with the Indonesians.

The next dealing was the formation of Burmast Shipping. NJDW did not know the identity of the others involved in the venture, but believes that they were Indonesians. NJDW mentioned Ibnu as one

^{1/} This relates to the claims of PS&S against C Ventures which was ultimately paid and which resulted in the formation of the two Zodiac joint ventures whose charters were to Pertamina.

of the individuals. The charters to Pertamina were profitable and their details were not presented to Swindon. They were regarded as normal charters which did not require approval. With regard to the Indonesian ventures, NJDW noted that in that part of the world, the only way to do business was to use nominee companies to give people like the generals some money. NJDW acknowledged that Burmast Shipping was not a genuine joint venture, but that Astrofina del Mar was simply the nominee whereby Indonesian officials got money.

Burmast East was the next dealing with the Indonesians. At the time of the creation of Burmast East for the Pertamina LNG transportation agreement, NJDW was wholly submerged in working on the Signal Oil acquisition and he only generally knew what was going on with regard to Burmast East. He recalls that Burmah did require a restructuring of the shares of Burmast East and recalls that EJK himself said that he was unhappy with the number of shares allotted to the Indonesians. DS referred to the board minutes showing the initial intent that Burmah get 57% of Burmast East and the minutes showing Burmah later getting 85%. NJDW did not specifically recall hearing the name Overseas Natural Gas until recently when Mr. Wilson told him about it. But he did understand that this was the Indonesians' company, again mentioning Ibnu.

NJDW did not know of EJK's interest in ONG. If he had known about it, he would not have approved it because "it isn't

allowed." (He noted that he was in fact chiefly responsible for EJK not getting a 10% equity interest in Tankers as requested by EJK.) EJK did later raise the question whether he should get a commission for putting the LNG deal together. NJDW told EJK that they would discuss it if the project went well. Sometime in November-December 1974, he remembers EJK talking casually at dinner about taking care of his son by a trust fund but does not believe that EJK mentioned any particulars. This was not to him a disclosure of EJK's interest in ONG.

DS then recited the history of the opinion letter to Edna as reflected in the files. NJDW believes that Edna was in fact Pertamina, even though it purported to be the Hong Kong broker Robin Lowe. NJDW believes that although the shares in Burmast East were reshuffled, the same ultimate percentage resulted, i.e., that Tankers got a bigger percentage of Burmast East but a restructured deal so that Edna was still entitled to get shares. DS and TEP noted that no documents presently available to us indicate that Burmah's share in Burmast East was to remain the same overall even though its shareholding was increased.

4. El Padron.

NJDW was never aware of the El Padron transaction and in particular he did not know that EJK had an interest in El Padron. If he had known, he would have taken the position that "it could not have been done." This was a charter transaction so

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it was not expected to be submitted for approval. NJDW stated that he does not know Stephen David Morrelle but thinks he might be a Singapore broker. He did not know that David Morrelle was anything more than a broker for the Indonesians.

NJDW said that he did not know that he was on the boards of Burmast East and Burmast Shipping. If he was put on those boards, it was without his approval. DS and TEP noted that the records show his membership on the boards of these companies.

5. Profit Improvement Scheme (PIS).

NJDW believes that EJK probably originated the PIS together with Dennis Thatcher at the time when EJK reported to Thatcher. NJDW understood it to be a device to bring profits forward to present years on the sale of charter parties so as to even out profits over the years. The scheme was said to be achieved by the exchanging, sale or discounting of charters. It was discussed a lot by the board. In March, 1974, EJK was told by the Managing Director's office to do something about profits, i.e., to obtain more out-charters. They also discussed a Profit Improvement Scheme by bringing forward profits on two particular vessels. NJDW recalls that Simonis said at the end of 1974 that the Cedros Profit Improvement Scheme of EJK's was not in fact a proper increase in profits but at best a loan arrangement. NJDW did not recall the second vessel, but the Cedros was the largest. (See memorandum of interview of Peter Simonis.)

At this point, NJDW noted that the words "audit proof" were sometimes used and that they meant that auditors' approval should be obtained before a transaction was arranged because the accountants were changing and tightening their rules so frequently. The Profit Improvement Scheme had as its basic objective in 1974 the obtaining of cash more so than obtaining profits. Burmah had many large cash commitments and Tankers was not generating any cash at the time.

Tankers could have chartered out its vessels long-term and locked in a better level of income. However, it did not do so because Burmah wanted to keep the vessels free for its own use, e.g., in the Bahamas Terminal and in Burmah refinery trade, rather than committing them long-term for the use of others.

6. Klaveness.

The name Klaveness does not ring a bell. DS and TEP explained the facts of the transactions. NJDW recalls the names of the Jole Fassio and the Koll as engaged on a profitable South African run. He does not equate those vessels with Klaveness. He knew there was a 1972 profit improvement scheme involving a charter but did not know any details.

EJK could not have committed Tankers to making a borrowing without board approval. NJDW does recall that the 1972 discounting of profits scheme involved some Norwegian vessel. He recalls asking EJK why the Norwegians would enter into such a transaction to pay money to Tankers. EJK replied

that it suits Tankers to accelerate income and it suits the Norwegians to reduce income. But NJDW does not recall anything more than a normal transaction to accelerate profits on a charter party. He does not recall any details of the Klaveness joint venture. If he had known of the fictitious charter parties and of the fictitious cancellation agreement, he would not have approved of it because it "couldn't be done."

NJDW was asked why Burmah guaranteed such major commitments as the Klaveness joint venture without scrutiny. At first, he answered that no one would enter into a transaction with a subsidiary but for a parent guarantee. He was then asked why the parent would guarantee such commitments. He said that a guarantee of a debt required approval by the parent board but that a performance guarantee was regarded as only the guarantee of using best efforts to cause performance of a charter and involved only perfunctory approval. This lasted until mid-1974 when the company realized that the guarantee of charter hire which equals a bank financing commitment was the same as a debt guarantee and it was stopped. Until then, there was little control over the guarantee of charter party performances. It was "just perfunctory." The July, 1974, guarantee of the Klaveness joint venture was viewed as just a replacement of an existing performance guarantee.

NJDW said he assumed that the charter parties were valid because if so there would be nothing wrong with backdating the

cancellation to accelerate profits. If the charter parties were not real then of course the transaction would not be allowed.

NJDW did not know that the joint ventures had provisions to get the money back to Klaveness. He heard recently that there was a "side letter" to that effect and asked us if there was such a side letter. TEP said that there were addenda to the joint ventures relating to the repayment but that the figures were also in the joint venture agreements.

7. Vardefjell - Jonwi.

DS explained these transactions. NJDW recalled the name Newgate from somewhere but does not recall any discussion about the undisclosed intermediate companies. His only recollection was that EJK once said in 1974 that the Norwegians were getting nervous about money they had tucked away from tax authorities but this was not related by EJK to the Vardefjell or Jonwi transactions. NJDW recalls well the name Hocus-Pocus and recalls asking EJK "who the hell they were." When he learned they were Brandts Leasing, he was satisfied. Otherwise, NJDW has no recollection of Oldgate, Newgate, Freeway or Tristar. He stated that there must have been some reason for their interests in the transactions but cannot honestly remember why they were involved. He said that if prompted, he might say that it must have been a Norwegian tax deal but he honestly cannot remember. He only recalls that Newgate rings a slight bell. He suggested that it might be a finders fee. NJDW did not know of Arne Naess' involvement in these transactions. He only knew generally that Naess

was one of several brokers for Tankers. (Later he mentioned that he thought Naess was perhaps the true culprit.)

8. Falkefjell and Fagerfjell.

NJDW has no recollection at all of these two vessels.

9. Mosli and Spar.

He knew that EJK had put some superfinancing money in account but did not know why. He doubts that it was for the purposes of the Bahamas Terminal, but probably as a second part of the Saudi payment. EJK told NJDW about it only after it was done and NJDW told EJK to get the money back to Tankers immediately. He assumes that all of the money was returned. As to Spar, the \$2.5 million was a scheme by EJK and Brian Thomas to corner Saudi Arabian oil to the U.S. This is why Tankers was used because it was principally a U.S. project. EJK and Thomas put the deal together. Thomas gave NJDW the details of the plan but not the details of the financing through the sale of vessels. He does not know why Battersea got a \$2 million transfer commission.

10. The Carnegie Joint Venture.

NJDW knew nothing about the details of this joint venture. He only knew generally that it existed. He had no knowledge of the release of shares from escrow to profit EJK's relatives without consideration to Tankers. If he had known, he would not have approved it.

11. John Davies.

Davies was not satisfactory as a management person. He was a good lawyer but not a businessman. He was an "inveterate pot-stirrer." He always liked to "twist the knife" at someone else and was something of a trouble maker in the company. There was some talk that Davies and EJK were shareholders together in some Louisiana refinery project. The Davies letter was referred to. NJDW said he would not be surprised if Davies got a commission from EJK but did not know.

12. Conclusion.

NJDW's main problem in dealing with EJK was that the dealings were essentially second-hand by the review of documents already drafted and presented or through reports from Dewhurst. Oral communications from EJK were difficult to understand. NJDW does not believe that EJK has much money and in his opinion, EJK should be sued only if the company is forced to do so to indemnify it against losses. NJDW believes from what he had learned that Naess is the one who benefited the most by Tankers' transactions.

TEP

TEP/ssg

NOTICE OF SPECIAL APPEARANCE AND OF MOTION TO DISMISS

CFR:amm
76-3229UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE KNAPP

UNITED STATES OF AMERICA,
by Dorothy S. Greenberg, for
herself as well as for the
United States of America,

Plaintiff,

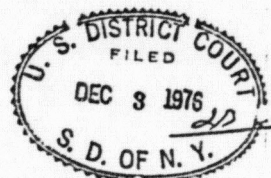
-v-

THE BURMAH OIL COMPANY LIMITED,
et al.,

Defendants.

NOTICE OF SPECIAL
APPEARANCE AND OF
MOTION TO DISMISS

76.Civ. 4351 (WK)



PLEASE TAKE NOTICE that the United States of America by its attorney, Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, hereby enters a special appearance in this proceeding for the limited purpose of moving to dismiss this action for lack of jurisdiction pursuant to 31 U.S.C. §232 (C).

PLEASE ALSO TAKE NOTICE that, upon the annexed affidavits of Samuel B. Nemirow, sworn to on November 30, 1976; Charles Franklin Richter, sworn to November 30, 1976; Calvin Kurimai, sworn to November 26, 1976, and George A. Fitzsimmons, sworn to November 24, 1976, the United States of America will move this court in Room 307 on December 10, 1976, at 2:00 o'clock in the afternoon for an order dismissing this action for lack of jurisdiction.

Dated: New York, New York
December 1, 1976

ROBERT B. FISKE, JR.
United States Attorney

By: *Charles Franklin Richter*

CHARLES FRANKLIN RICHTER
Assistant United States Attorney
One St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 791-1972

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AFFIDAVIT OF SAMUEL B. NEMIROW, FOR
GOVERNMENT, IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, by)
Dorothy S. Greenberg, for herself as)
well as for the United States of)
America)

Plaintiff,)

- against -)

THE BURMAH OIL COMPANY LIMITED, et al)

Defendants.)

AFFIDAVIT

76 Civ: 4351(WK)

District of Columbia) ss
City of Washington)

AFFIDAVIT OF SAMUEL B. NEMIROW

Samuel B. Nemirow, being duly sworn, hereby deposes and says:

1. I am the General Counsel of the Maritime Administration ("MarAd"), a primary organization within the United States Department of Commerce, and I submit this affidavit in support of the motion of the United States to dismiss this action for lack of jurisdiction.

2. I have read the complaint filed in this action and the documents submitted by the relator to the Department of Justice which are listed in Schedule A to the complaint. The relator has not presented any substantive information not known to MarAd prior to September 30, 1976, when, I am informed, this action was commenced.

3. The sole purpose of this affidavit is to describe generally the information known to MarAd prior to the commencement of this action and not to take any position as to the merits of the allegations contained in the documents submitted by the relator and in the complaint.

4. The documents and the complaint center upon applications for construction-differential subsidy ("CDS") under Title V of the Merchant Marine Act of 1936, as amended (46 U.S.C. §§ 1151-1161) and for guarantees of obligations under Title XI of the same act (46 U.S.C. §§ 1271-1280) ("Title XI guarantees").

5. The payment of CDS is intended to encourage the growth and maintenance of both the United States merchant marine and the United States shipbuilding industry. The subsidy payment represents the difference in construction costs between a ship constructed in a foreign shipyard and the same ship constructed in a United States shipyard. The law provides in 46 U.S.C. §§ 1151 that any proposed ship purchaser who is a citizen of the United States or any shipyard of the United States may apply for CDS for vessels to be used in the foreign commerce of the United States. United States citizen is defined in 46 U.S.C. §§ 1244 and in §2 of the Shipping Act of 1916, as amended, 46 U.S.C. §§ 802.

6. Title XI guarantees are full faith and credit guarantees by the United States of debt obligations issued by United States citizen shipowners for the purpose of financing or refinancing United States-flag vessels constructed or reconstructed in United States shipyards. The primary purpose of the program is to promote the growth and modernization of the United States merchant marine and only United States citizens, as defined in 46 U.S.C. §§ 802 and 46 U.S.C. §§ 1244, may apply for such guarantees. Under this program, for example, the United States guarantees prompt payment in full of interest and unpaid principal in the event of default in payment of funds borrowed to finance the construction or reconstruction of a ship.

7. Any vessel constructed with either CDS assistance or Title XI assistance must be registered under the United States flag, be manned by a United States citizen crew, must use United States parts and materials to the greatest extent possible, be built in United States shipyards and be subject to requisition in times of national emergency.

8. The central allegation in the complaint is that there has been a violation of the requirement of United States citizenship for CDS and Title XI guarantees. However, MarAd knew of these allegations prior to commencement of this action and had all of the relevant information that is set forth in the documents listed in Schedule A to the complaint. The information has been in MarAd's possession from four sources: (1) the applications and other documents submitted to MarAd in connection with the processing of the applications for CDS and Title XI guarantees, (2) letters and conversations prior to September 30, 1976, (3) several of the documents listed in Schedule A to the complaint, and (4) media reports.

The Applications

Cryogenic Applications

9. On July 14, 1972, Cryogenic Energy Transportation, Inc., Liquegas Transport Inc. and LNG Transport Inc. (hereinafter collectively referred to as the "Cryogenic Corporations") filed applications for CDS for three LNG tankers to be built by General Dynamics Corporation. A copy of the original application, without attachments, of Cryogenic Energy Transport, Inc. which is virtually identical to the other two Cryogenic Corporations' application, is attached hereto as Exhibit 1. The applications of the Cryogenic Corporations were amended on August 31, 1972, September 15, 1972, and September 20, 1972.

A representative copy of each amendment, without attachments, is attached hereto as Exhibits 2, 3, and 4 respectively.

10. On August 31, 1972, the Cryogenic Corporations filed applications for Title XI guarantees for obligations to be issued to finance construction of the same three vessels. A copy of the original application, without attachments, of LNG Transport, Inc., is attached hereto as Exhibit 5. The applications of the other two Cryogenic Corporations are virtually identical. The applications were amended on September 15, 1972, and on September 20, 1972. A representative copy of each amendment is attached hereto as Exhibits 6 and 7 respectively.

11. On September 22, 1972, MarAd approved CDS for the three Cryogenic vessels. It also sent a letter to the Cryogenic Corporations, a copy of which is attached hereto as Exhibit 8, conditionally committing MarAd to grant Title XI guarantees in connection with financing the construction costs of the vessels. The formal commitment to grant Title XI guarantees was given on August 9, 1974.

12. As shown by these documents, as well as by contracts executed on August 9, 1974, the vessels are to be used to transport LNG from Algeria to the United States. The financing arrangement used is referred to as leverage lease financing which is a common form of financing not only for vessels, whether or not constructed with CDS and Title XI guarantees, but also of airplanes, buildings, and other major items. In this type of financing an equity investor or investors normally establish an owner trust which acquires the vessel and then leases it to the lessee. The lease is leveraged in that the owner trustee becomes the owner by providing a percentage of the capital needed to acquire the vessel which capital is received from the equity investors. The balance of the purchase price is borrowed by the owner trustee from institutional investors.

In the case of vessels, the owner trustee leases the vessel to a bareboat charterer which is responsible for hiring the officers and crew, operating and maintaining the vessel. The bareboat charterer may in turn charter the vessel to another party under a time charter, pursuant to which the bareboat charterer is responsible for carriage of such cargoes as may be specified by the time charterer for the term of the charter.

13. In this particular case, the owner of the Cryogenic vessels is Wilmington Trust Company as trustee for wholly owned subsidiaries of Citicorp Leasing, Inc., General American Transportation Corporation and First Chicago National Bank. Wilmington Trust Company entered into an agreement on August 9, 1974, to bareboat charter the vessels to Summit I, Inc., Summit II, Inc. and Summit III, Inc., which are Delaware corporations and wholly owned subsidiaries of Summit Marine Operations, Inc., (Summit Marine). Summit Marine is a subsidiary of Energy Transportation Corporation ("Energy"), another Delaware corporation. The owners and principal officers of Energy are C.Y. Chen, with 30 percent of the stock interest, Atwell & Co., nominee of the trustee of a trust for Mr. Chen's two sons, with 50 percent of the stock interest, Joseph Cuneo with 10 percent of the stock interest, Jerome Shelby with 5 percent of the stock interest, and John O'Grady, trustee under a trust for children of Jerome Shelby with 5 percent of the stock interest.

14. The bareboat charterers entered into an agreement on August 9, 1974, to time charter the vessels to Bethel Marine, Southhold Marine and Vermont Marine (the "Marine Corporations"), three Delaware corporations which are wholly owned subsidiaries of subsidiaries of Burmah Oil Company Limited ("Burmah"), a

United Kingdom Corporation. The Marine Corporations are incorporated in Delaware and as such are citizens of the United States but since they are subsidiaries of a foreign corporation, they are not United States citizens within the meaning of §§ 2 of the Shipping Act of 1916 (46 U.S.C. §§ 802). However, Section 37 of the Shipping Act, 1916, as amended (46 U.S.C. §§ 835) provides that a vessel may be time chartered to an alien upon approval by MarAd and MarAd gave its initial approval in this case on September 28, 1972.

15. The time charterers have entered into a vessel management contract, dated August 9, 1974, with Burmah Oil Tankers Limited, a Bermuda corporation which is wholly owned by Burmah, pursuant to which the vessels will be made available to fulfill the transportation agreement dated June 26, 1972, between Burmah Oil Tankers, Ltd. and a joint venture known as "Easco" made up of Public Service Electric & Gas Company of New Jersey and Algonquin Gas Transmission Co., two United States utilities. Easco has a contract with Algeria for the purchase of LNG and these vessels will be used to transport the LNG to the United States.

16. Burmah Oil Tankers Limited on August 9, 1974, entered into the BOT Time Charter Guarantee whereby it guarantees to the owner and the bareboat charterer the payment of all time charter hire and other specified sums which are payable by the time charterer to the bareboat charterer.

17. The original applications for CDS and Title XI guarantees indicate that the Cryogenic Corporations and Summit Marine, the originally proposed bareboat charterer, were owned by James H. Durbin. His affiliations with several United States subsidiaries of Burmah were also listed in the original application. However, on or about September 14, 1972, and prior to MarAd approving CDS or Title XI guarantees, Durbin transferred all of his stock in the Cryogenic Corporations to Wilmington Trust and all of his stock in Summit Marine to C.Y. Chen. In

or about March 1973 Chen transferred his stock to Energy.

18. The three vessels are presently being constructed by General Dynamics Corporation and are nearing completion. As of the present time the aggregate construction cost paid on the vessels is \$280 million of which the United States has paid CDS of approximately \$79 million to General Dynamics Corporation for these vessels. The construction costs, less CDS, are being financed by a loan from First National City Bank, 75 percent of which is guaranteed under Title XI and the remainder by Burmah. Upon completion of the vessels, they will be delivered to the owner which will deliver them to the bareboat charterer. The interim construction financing will be converted into permanent financing by the sale of long term obligations for 75 percent of the actual cost of the vessels, net of CDS. These obligations will carry Title XI guarantees and the proceeds will be used to repay the Title XI guaranteed obligations issued to the First National City Bank.

Cherokee Applications

19. On August 8, 1973, four corporations, Cherokee I Shipping, Inc., through Cherokee IV Shipping, Inc., filed applications for Title XI guarantees for four LNG vessels to be built by General Dynamics Corporation. These applications were amended on October 11, 1973. A copy of the application of Cherokee II, as so amended, without attachments but including a copy of the original application, without attachments, is attached hereto as Exhibit 9; the applications of the other Cherokee Corporations are vitrually identical. On November 7, 1973, MarAd sent a letter to Cherokee I through Cherokee IV, a copy of which is attached hereto as Exhibit 10, conditionally committing MarAd to issue Title XI guarantees for financing the construction of these four vessels provided that the conditions set forth in the letter were met.

20. On February 12, 1974, Cherokee V applied for Title XI guarantees for another LNG tanker to be built by General Dynamics Corporation. On May 21, 1974, MarAd sent a letter of conditional commitment similar to the one it had sent Cherokee I through Cherokee IV.

21. The applications filed by Cherokee I through Cherokee V contemplated leverage lease financing similar to that used for the Cryogenic vessels. The vessels, it was stated in the applications, were to be owned by a trust or corporation established by institutional investors which would bareboat charter the vessels to subsidiaries of Energy. These subsidiaries would in turn time charter the vessels to United States subsidiaries of subsidiaries of Burmah. The time charterers would also enter into a vessel management contract with Burmast East Shipping Corporation ("Burmast"), a Liberian corporation, 57 1/2 per cent of whose stock it was stated was owned by Burmah Oil Tankers. Pursuant to that agreement, the vessels would be made available to fulfill Burmast's transportation agreement with Perusahaan Pertambangan Minyak Dan Gas Bumi Negara, an Indonesian corporation known as "Pertamina". The transportation agreement, dated September 23, 1973, provides that Burmast will transport LNG from Indonesia to Japan.

22. The original applications filed by Cherokee I through Cherokee IV stated that these corporations were owned by John C. Bullitt, a partner at the law firm of Shearman & Sterling. The amended applications show that the ownership had thereafter been transferred to Energy.

23. On August 27, 1976, Cherokee I, through Cherokee V joined by General Dynamics Corporation, amended their applications, a copy of which amendment is attached hereto as Exhibit 11. The amendment states, among other things, that General

Dynamics Corporation will incorporate five wholly-owned subsidiaries which will become the owners of these vessels by purchasing all of the stock of the Cherokee Corporations. These owners will bareboat charter the vessels to subsidiaries of Energy which will in turn time charter the vessels to subsidiaries of Burmah Oil Shipping, Inc., a Delaware corporation wholly-owned by Burmah. The time charterers will also enter into a vessel management contract with Burmah Gas Transport Limited, a Liberian corporation wholly-owned subsidiary of Burmah, which is the successor by assignment of Burmast.

24. MarAd has not yet acted upon these amended applications for Title XI guarantees. The vessels are presently under construction by General Dynamics Corporation pursuant to contracts between it and each of the Cherokee Corporations. As known by MarAd prior to the commencement of this action, Burmah has been making unsecured loans to Cherokee I through Cherokee V, the proceeds of which have been used to make progress payments to General Dynamics Corporation for construction of the vessels.

25. In sum, then, while I have not attempted to state all of the details contained within the documents submitted as part of the Cryogenic and Cherokee applications, or the contracts entered into in connection with the Cryogenic vessels, these documents and contracts do set forth the method by which the vessels are to be financed, the purposes they are to be used for, the intended bareboat and time charterers and the stockholders, directors and officers of all the parties involved.

Dispute Between Burmah and Energy

26. As to the allegations contained in the documents submitted by the relator of violations of the citizenship requirement, Burmah itself made this information known to MarAd prior to commencement of this action.

27. In the beginning of 1975, Elias J. Kulukundis, the then President of Burmah Oil Tankers was replaced by John J. McMullen. During 1975 Burmah and its subsidiaries brought to MarAd's attention allegations that the Cherokee corporations were not United States citizens within the meaning of Section 2 of the Shipping Act 1916, as amended (46 U.S.C. §§802). Burmah made these charges in letters to MarAd and Energy, copies of the ones known to MarAd being attached hereto as Exhibit 12. The letters from Burmah set forth in detail the basis of its charge that each of the Cherokee corporations had an obligation to transfer its stock at the direction of Burmah, including a statement that all costs and expenses of the Cherokee I through Cherokee V projects had been paid by Burmah.

28. On May 1, 1975, Robert J. Blackwell, Assistant Secretary of Commerce for Maritime Affairs, sent a letter to Energy stating that (1) Burmah's allegations raised concern as to whether the citizenship requirement of the statute had been satisfied, (2) Energy should respond in writing to Burmah's charges and (3) a meeting would be held, if necessary, to discuss the matter. A copy of that letter is attached hereto as Exhibit 13.

29. Moreover, representatives of MarAd, including myself, had numerous conversations with John J. McMullen, Richard Kurrus of the law firm of Kurrus & Ash (former known as Kurrus & Jacobi), the attorneys for Burmah Oil Tankers, C.Y. Chen, the president of Energy and the Cherokee corporations, Jerome Shelby and Joseph Cuneo. These conversations concerned whether the Cherokee and Cryogenic transactions satisfied the citizenship requirement of the statute. During these conversations MarAd was informed in detail of the basic factual allegations underlying the claim that the citizenship requirement had not been satisfied.

30. Thus, based upon these facts, letters and conversations, MarAd was well aware of the information contained in the documents submitted by the relator.

Relator's Documents

31. In addition, in or about September 1975, I was shown a copy of the 63 page Memorandum of Law prepared for Burmah Oil Tankers, Ltd., which is item number 4 submitted by the relator in this action. That document concluded that the Cherokee Corporations were not United States citizens based upon the following assertions, among others, made in the Memornadum of Law:

- a. The Cherokee Corporations were created and formed at the direction of the former President of Burmah Oil Tanker, Ltd., Elias J. Kulukundis;
- b. All of the stock of Cherokee 1 through Cherokee IV was held by attorneys for Burmah with the clear understanding that they were subject to Burmah's directions and control and that they would transfer such stock to Burmah's designee when instructed to do so;
- c. All of the costs connected with the Cherokee Corporations, including all Title XI filing fees, legal expenses and the construction progress payments to General Dynamics Corporation had been borne by Burmah and neither Energy nor its principals had invested any funds in the Cherokee Corporations;
- d. The stock of Cherokee I through Cherokee IV was transferred twice to Burmah designees at the direction of Mr. Kulukundis, the first time from John Bullitt of Shearman & Sterling,

which represented Burmah, to Eli Ellis, another lawyer representing Burmah, and the second time from Ellis to Energy, the controlling interest in which is held by C.Y. Chen a long-time business associate of Mr. Kulukundis; and

- e. The negative covenants in the promissory notes from the Cherokee Corporations to Burmah in return for money loaned to them by Burmah to pay the General Dynamics Corporation progress payments give Burmah the power to control the Cherokee Corporations. A copy of the form of these notes was also attached to the memorandum.

32. MarAd also received in or about November 1975 a copy of the complaint in the action brought by Burmah and Burmah Oil Tankers against Energy, the Cherokee Corporations, and individual defendants, which is item 5(b) submitted by the relator. The complaint repeated many of the same factual allegations contained in the Memorandum of Law. It sought, among other things, judgment declaring that Energy, the Cherokee Corporations and the individual defendants should be directed to transfer their stock and the construction contracts between the Cherokee Corporations and General Dynamics Corporation to a named company or a trustee for the ultimate owners of the vessels and that Energy and Cherokee Corporations be required to pay approximately \$78 million plus accrued interest on the Cherokee promissory notes due November 17, 1975. The action was discontinued in April 1976 pursuant to a stipulation entered into between the parties dated April 27, 1976.

33. Prior to commencement of this action, MarAd was also aware of virtually all of the American newspaper and magazine articles which are included in item 6 as well as some of the foreign articles which essentially contain the same information as the American articles submitted by the relator. In addition MarAd knew of other articles which are not listed in item 6, including, for example, the London Times for August 20, 1976.

34. Prior to the commencement of this action MarAd received a copy of a complaint by Burmah Oil Tankers, Limited and the Burmah Oil Company Ltd. v Elias J. Kulukundis, et al, which was to have been filed in the Supreme Court of the State of New York, County of New York, item 5(a) submitted by the relator, which complaint alleges that said Elias J. Kulukundis possessed an interest in Overseas Natural Gas Transportation Corporation which had an interest in Burmast and that said Kulukundis' interest had not been disclosed to Burmah.

35. In addition to the documents described in paragraphs 9 through 34 above, Schedule A to the Complaint lists four other documents items 1, 3, 7, 8 (a) and (b) submitted by the relator to the Department of Justice. MarAd has been given copies of these documents by the Department of Justice and while MarAd had not received them before, they do not contain any significant information not previously known by MarAd either from the documents described above or through being told by representatives of Burmah and Energy.

36. For example, items 7 and 8(a) and (b) of Schedule A to the Complaint, have little relevance to the Cryogenic or Cherokee applications. To the extent they are relevant their main thrust is that Elias J. Kulukundis had an interest in Overseas Natural Gas Transportation Corporation which had an interest in Burmast and that Kulukundis had not disclosed this to Burmah. (Burmast has been replaced by Burmah Gas Transport Ltd., which, according to the August 26, 1976, amendment to the Cherokee applications, is wholly-owned by Burmah).

MarAd had been informed of this in 1975 by representatives of Burmah prior to the filing of this complaint. In fact the same allegations are contained in the complaint against Elias J. Kulukundis described in paragraph 34 above. In addition, item 2 is a memorandum of meetings I and Robert J. Blackwell attended, and which MarAd was thus aware of.

Other Governmental Inquiries

37. Finally it should be noted that parts of the Government, other than MarAd, were aware prior to the commencement of this action of the allegations that the citizenship requirement had not been satisfied in either the Cherokee or Cryogenic transactions.

38. In 1974 a private citizen made the charge to Senator Byrd of West Virginia and officials at the White House that the citizenship requirement had been violated in connection with CDS granted on the Cryogenic vessels because the vessels were to be time chartered to corporations which were controlled by Burmah. The White House referred the matter to the Office of Legal Counsel of the Department of Justice for its opinion. A copy of the Department of Justice's opinion, which had been sent to me concurrent with its issuance, is attached hereto as Exhibit 14.

39. By letter dated March 3, 1976, Congressman Les Aspin wrote to Robert J. Blackwell concerning the Cherokee applications. Among other things, Congressman Aspin expressed concern about whether the citizenship requirement was being met since it appeared to him that Burmah and Burmast may be the key parties in that transaction with overall control. By letter dated April 21, 1976, Mr. Blackwell responded to Congressman Aspin explaining the structure of the Cherokee transactions. By letter dated May 25, 1976, Congressman Aspin wrote to

Congressman Jack Brooks, Chairman of the House Committee on Government Operations (the "Committee") referring the matter to the Committee's attention. Copies of these three letters, as they appeared in the Congressional Record on May 25, 1976, are attached hereto as Exhibit 15.

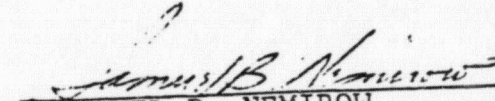
40. In June 1976 the Committee contacted MarAd concerning the issues raised in Congressman Aspin's May 25, 1976, letter. I and other officials of MarAd met with staff members of the Committee on at least 5 occasions since that time and prior to the commencement of this action. During these meetings we explained the structuring of the Cherokee and Cryogenic transactions including the role of Burmah and its subsidiaries.

41. During August 1976 and early September 1976, investigators from the General Accounting Office visited MarAd at the request of the Committee and were given all of MarAd's records concerning the Cryogenic and Cherokee transactions. MarAd officials also explained to them the structuring of both transactions.

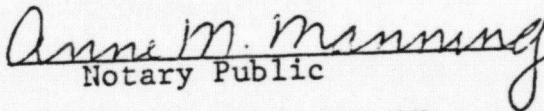
42. In late August 1976 MarAd met with officials of the Securities and Exchange Commission and had later telephone conversations with them during which we explained the structuring of the Cherokee transaction including the role of Burmah and its subsidiaries.

43. On October 4, 1976 I and other officials of MarAd met with a representative of the Department of Justice and explained the structuring of the Cherokee transaction.

44. In short, the citizenship question raised in the documents submitted by the relator and in the complaint were known to and the subject of review, not only by MarAd, but also by other parts of the Government before the relator's action was commenced.


SAMUEL B. NEMIROW

Sworn to before me this
26th day of November, 1976.


Notary Public

My Commission Expires April 14, 1979

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss .

ALLEN Q HAYES, being duly sworn,
deposes and says that deponent is not a party to the action
is over 18 years of age and resides at 162 Navy Walk
Apt 6A Brooklyn NY 11201.

That on the 22nd day of MARCH, 1977,
deponent personally served the within JOINT APPENDIX (Volume I of
II - Pages A-1 - A-279)
upon the attorneys designated below who represent the
indicated parties in this action and at the addresses below
stated which are those that have been designated by said
attorneys for that purpose.

copy

By leaving One true/~~copies~~ of same with a duly
authorized person at their designated office.

~~By depositing true copies of same enclosed~~
in a postpaid properly addressed wrapper, in the post office
or official depository under the exclusive care and custody
of the United States post office department within the State
of New York.

Names of attorneys served, together with the names
of the clients represented and the attorneys' designated
addresses.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
Attorneys for Defendants-Appellees Summit Marine Operations, Inc.,
Summit I Inc., Summit II, Inc., Summitt III, Inc., Cherokee I
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Attorneys for Defendant-Appellee General Dynamics Corporation
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Allen Q Hayes

Sworn to before me this

22nd day of MARCH, 1977.

Michael DeSantis
MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Queens County
Commission Expires March 30, 1979

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss .

GLENN ISCOE, being duly sworn,
deposes and says that deponent is not a party to the action,
is over 18 years of age and resides at 2117 78th ST
JACKSON HEIGHTS, N.Y.

That on the 22nd day of MARCH, 1977,
deponent personally served the within JOINT APPENDIX (Volume I of
II - Pages A-1 - A-279)

upon the attorneys designated below who represent the
indicated parties in this action and at the addresses below
stated which are those that have been designated by said
attorneys for that purpose.

COPY

By leaving ONE true/~~copy~~ of same with a duly
authorized person at their designated office.

~~By depositing _____ true copies of same enclosed
in a postpaid properly addressed wrapper, in the post office
or official depository under the exclusive care and custody
of the United States post office department within the State
of New York.~~

Names of attorneys served, together with the names
of the clients represented and the attorneys' designated
addresses.

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Citimarlease (Burmah Liquegas), Inc.
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New York, N. Y. 10005

(FOR ADDITIONAL ATTORNEYS SEE FOLLOWING PAGE 2)

Glenn Iscoe

Sworn to before me this

22nd day of MARCH, 1977.

Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Queens County
Commission Expires March 30, 1979

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